1970

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Minn. L. Rev. Editorial Board

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Notes

Inequitable Disqualification from Unemployment Insurance in Minnesota

I. INTRODUCTION

The Minnesota legislature, upon enactment of the state's first unemployment insurance law in 1936, explicitly recognized the economic and social problems precipitated by unemployment and the interest of the state in arresting its spread and buffering its immediate effects. The preamble to the act reads:

[T]he public good and the general welfare of the citizens of this state will be promoted by providing . . . for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.¹

In the 34 years since the promulgation of this legislation, the enactment of several disqualification provisions has altered the thrust of the statute. The effect of the present disqualification provisions is to punish unduly the behavior of certain claimants who contribute to their own unemployment and to deny all benefits to others who are unemployed through no fault of their own. These results should be avoided by any scheme of unemployment insurance.

This Note will examine the problems raised by the various disqualification provisions in terms of traditional insurance concepts and social policy. Suggestions for a more equitable unemployment insurance scheme for Minnesota will be made.

II. BACKGROUND

A. GENERAL

Despite its name, unemployment insurance is not precisely an insurance program. Rather, it is a type of social welfare legislation financed by a payroll tax imposed on employers. The rate of this tax depends upon the employer's experience with the fund.² Under the Minnesota law, each time the employer is responsible for the involuntary unemployment of a claimant, the benefits paid are charged to his account. When

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the unemployment is considered to be voluntary or due to misconduct on the part of the claimant or when neither claimant nor employer is responsible, the employer is not charged. It is therefore in the employer's interest to keep charges at a minimum.

Unlike most welfare programs, however, unemployment insurance does not operate on a principle of need. Only those persons with a prior employment history have the requisite base period upon which unemployment insurance benefits can be computed. Coverage under the Minnesota law is limited to individuals who earned $30 or more during at least 18 weeks of the 52 calendar week period immediately preceding the date of the claim. These 52 weeks are appropriately called the claimant's base period. The claimant's unemployment insurance is determined by two factors. The weekly benefit amount is equal to one half of the average weekly base period wage up to $114 per week, or a maximum weekly benefit amount of $57 per week. The total number of weeks that the claimant can collect, or the duration of the claim, is equal to 70 percent of the number of weeks during the base period in which the claimant earned $30 or more (credit weeks). In no case, however, will duration exceed 26 weeks. The total benefit amount is the product of the weekly benefit amount and the duration.

When the claimant files a valid claim, a benefit year is established. This is the 52 calendar week period following the filing of a valid claim and is the administrative period of his claim. He cannot file a new claim during the benefit year unless

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3. This is not to say that these people may not be in need—they very often are. The point is that public assistance programs are designed to provide financial aid solely on a need basis. Unemployment insurance is something one gets not by need but by being an involuntarily unemployed member of the work force. It is much like the man who insures his garage against fire; if it burns down he collects on the policy regardless of his financial need. The factor, it has been said, that most clearly distinguishes social insurance from public assistance is the absence of a need requirement in the former. See W. HABER & M. MURRAY, UNEMPLOYMENT INSURANCE IN THE AMERICAN ECONOMY 43 (1966) [hereinafter cited as HABER & MURRAY].
the claim establishing the benefit year is invalidated. If the claimant exhausts his total benefit amount or duration before the end of the benefit year, he cannot file a new claim until the benefit year expires. Thus, an individual just entering the work force is unable to qualify regardless of financial need. Moreover, not all persons having the requisite work history can qualify for benefits, since two additional conditions must be met. First, the worker must be unemployed involuntarily and through no fault of his own. Secondly, although unemployed, he must remain an active member of the work force. Two types of statutory controls seek to insure that recipients fulfill these requirements.

Disqualification provisions suspend benefits if the claimant's separation from employment was either voluntary and without good cause or was precipitated by the claimant's misconduct. Two justifications are given for disqualification provisions. The first is that they are theoretically consistent with the insurance concept of real risk. Insurance policies are written to cover only risks which are always present and the occurrence of which can only result in unfortunate consequences. Coverage is excluded for certainties and created risks. In unemployment insurance, quitting is analogous to certainty since the insured event is always within the power of the beneficiary. Similarly, misconduct is analogous to created risk. The second and more significant justification is founded on public policy. It seems unfair to re-

10. In the event that the original claim was invalidated, any subsequent claim would have its own base period of 52 weeks preceding and its own benefit year of 52 weeks following the date of the new claim. Minn. Stat. Ann. § 268.07(2) (4) (Supp. 1970).

11. It is possible for a claimant to reach the duration of his claim without exhausting the total benefit amount. Ordinarily this results when there is a week of partial unemployment and the claimant has his weekly benefit amount reduced by whatever he earned in excess of $12 during the week. Minn. Stat. Ann. § 268.07(2) (4) (Supp. 1970).

12. If the claimant files a "transitional claim"—a new claim filed immediately upon the expiration of a benefit year—the benefit year will become the base period for a new claim. The validity and extent of the transitional claim will depend upon the work history during this period of time. If the claimant was unemployed during the entire preceding benefit year or did not earn at least $30 in 18 weeks of it, he will not have a valid claim and hence will not be entitled to unemployment insurance. Minn. Stat. Ann. § 268.09(1) (1) (Supp. 1970).

13. The Minnesota provision which covers voluntary leaving of employment without good cause and discharge as the result of misconduct (which is considered a form of voluntary unemployment, see text accompanying notes 26-30 infra) is found in Minn. Stat. Ann. § 268.09(1) (1) (Supp. 1970).

quire the employer to pay for unemployment which is neither fortuitous nor the employer's fault but is instead brought about by the actions of the beneficiary.

Eligibility provisions, unlike disqualification provisions, do not deal with acts which create or extend unemployment, but rather are concerned with assuring that claimants remain a part of the work force. Even though employment insurance is not geared to need, it is, like any insurance program, designed to alleviate economic loss caused by the event insured against. If the claimant would not be working anyway, his unemployment is not creating any financial loss and no reason exists to pay benefits. Generally, eligibility provisions take the form of an "able and available" test. If the claimant is unable to work because of an illness or personal emergency or is unavailable for work because of a temporary vacation or the like, benefits are denied for each day the condition exists. The same test is applied where the claimant by his actions does not appear to be a member of the work force, as where he refuses to accept referrals for available jobs or places unreasonable limitations on his employability. The latter is typically demanding a wage in excess of that currently offered for workers with the claimant's training and experience.

B. LENGTH OF DISQUALIFICATION

The extent to which benefits should be denied under disqualification provisions has been the subject of much dispute. One view is that an unlimited disqualification is most consistent with the concept of insuring only involuntary unemployment. It states that an individual who by his own action initiates his unemployment should be denied benefits for the entire duration of that period of unemployment. While this is consistent with the real risk requirement, it is arguable that claimants do not anticipate creating the risk of long term unemployment.

It is this unpredictable nature of unemployment which supports the second approach—limited disqualification providing for payment of benefits after a fixed period of time. It presumes that unemployment for an unreasonable period of time is due

15. Haber & Murray, supra note 3, at 38.
16. The Minnesota law provides that those who are not available or able to work will be disqualified from receiving benefits for any day in which that condition occurred. Minn. Stat. Ann. § 268.08(1) (Supp. 1970).
17. Haber & Murray, supra note 3, at 302-04.
to economic factors beyond the claimant's control. Thus, after a period of time in which the unemployed individual making a reasonable effort would have obtained employment, the unemployment is transformed from voluntary to involuntary.18 The justification for this view lies in the fact that it is not the nature of the initial act but the nature of the unemployment which is being insured against. Although in a strict sense the real risk requirement is not met, this approach is a reasonable compromise with the social policy underlying the law.19 Minnesota in its unemployment insurance program has adopted a scheme close to this approach.20

C. PENALTIES

Regardless of the length of disqualification, "the principles applicable to control of the risk do not, normally, permit the operation of anything that can be classified as a penalty or forfeiture, as such."21 A penalty is a provision which as a result of some claimant action adversely affects the claimant's right to benefits without regard to the relationship between the proscription and the risk insured. In the context of unemployment insurance, penalties are subject to two criticisms. First, punishment should not be a function of an insurance plan, but rather a function of criminal law if the misconduct is serious enough.22 Secondly, penalties focus on regulating the conduct itself rather than the conduct's relationship to the risk of unemployment.23 The behavior should be considered undesirable only insofar as it creates a condition of unemployment. The intrinsic "goodness" or "badness" of the act should not be relevant per se.

A provision which provides for forfeiture of all future benefits in the event a claimant loses his job as a result of misconduct

18. Id. at 302.
19. Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state . . . . [It] is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and lighten its burdens. This can be . . . [done] by the systematic accumulation of funds . . . . to provide benefits . . . thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. Minnesota Employment Security Law—Declaration of Public Policy. MN. STAT. § 268.03 (1967).
22. HABER & MURRAY, supra note 3, at 305.
23. Sanders, supra note 21, at 314.
would operate as a penalty. The worker could be deprived of benefits at some later time when his unemployment is not the result of misconduct. Attempts to include penalty clauses in private insurance contracts have been condemned, and for the most part, controlled by legislatures and courts.24

Unfortunately, the disqualification provisions25 of Minnesota's unemployment insurance law frequently penalize individuals. The provisions operate as penalties in three different ways. First, they may operate to provide for the suspension of the claimant's benefits for varying periods of time without regard to the relationship between the penalty and the risk insured. Second, they reduce the total benefit amount for specified activity by the claimant, thereby raising the possibility that benefits will not be available at a time when the claimant is otherwise legitimately eligible to receive them. Finally, there is provision for cancellation of wage credits. This provision is not related to risk of unemployment at all; it is designed purely to punish the claimant for past activity. The manner in which these penalties operate will become clearer as the specific provisions in which they are contained are examined in more detail.

III. MISCONDUCT—GROSS MISCONDUCT

The disqualification provision for simple misconduct in Minnesota provides five to eight weeks' disqualification, plus reduction of total benefits by an amount equal to the number of weeks disqualified multiplied by the weekly benefit amount.26 For gross


25. Disqualification is used here in a generic sense. It refers to all provisions contained in MINN. STAT. ANN. § 268.09 (Supp. 1970). This is to be distinguished from a specific control device contained in that section which provides for suspension of benefits for specified amounts of time for various activity by the claimant.

26. Any disqualification for voluntary leaving results in a reduction of the maximum benefits available to the disqualified claimant in an amount equal to two times the weekly benefit amount. MINN. STAT. ANN. § 268.09(1)(b) (Supp. 1970). If the claimant is discharged for misconduct, the reduction is equal to the number of weeks disqualified times the weekly benefit amount. This would operate as follows: assuming the disqualified claimant is entitled to $40 a week for 21 weeks, he would receive a maximum benefit amount of 21 times $40 or $840. The benefit reduction provision, assuming the claimant quit his job, reduces this by 2 times $40, or $80, from $840 is $760. If the claimant is unemployed for a long period of time and collects full benefits each week, a reduction of two weeks in the duration of his claim has in effect resulted. Instead of enough total benefits available to pay
misconduct the entire benefit year may be cancelled.27 The basis for the provision is that the claimant has performed an act which he should have known would lead to termination of his employment.28 Unemployment due to misconduct is therefore considered "voluntary" rather than involuntary.

It is this voluntary creation of risk that the variable disqualification for misconduct is designed to control. The period of time is not related to the gravity of the separation act per se but rather represents the length of time an individual separated under the circumstances in question would normally be unemployed.29 Unemployment which extends beyond this period is assumed due to economic circumstances beyond the claimant's control and not to the act of separation.30 The gravity of the act is relevant only insofar as it relates to the claimant's difficulty in obtaining a new job and thereby affects his expected period of unemployment.

The benefit reduction provision for misconduct and the distinction between ordinary misconduct and gross misconduct, however, indicates that the Minnesota law is more concerned with the gravity of the act per se than with the effect of the act on the claimant's anticipated duration of unemployment. The fact that the benefit reduction for misconduct varies directly with the length of the disqualification merely emphasizes the penal intent of the provision. The distinction between gross misconduct and ordinary misconduct frequently arises in the context of theft and rests solely on the distinction between petit and grand theft.31

The Minnesota misconduct provisions should be changed to provide a limited disqualification of fixed length. In the event

27. The gross misconduct provisions also provide for lesser penalties of 12 weeks disqualification with 12 weeks benefit reduction or partial or total cancellation of wage credits.
28. See Sanders, supra note 21, at 334-35.
29. See text accompanying notes 21-25 supra.
30. Id.
31. As described to the author by the Chief of Benefits of the Minnesota Dept. of Manpower Services, the issue will often turn on whether the value of the stolen article is to be determined by the employer's purchase cost as opposed to market retail value or replacement cost. It is self evident that a prospective employer is not going to be any less reluctant to hire an individual merely because by chance he stole an article that had a replacement value of $99.98 rather than $100.02.
that a variable disqualification is retained, the variability should be related to legitimate objectives of an unemployment insurance scheme. For instance, the claimant’s ordinary occupation would seem to be more relevant to the length of disqualification than the nature of his separation act.

IV. VOLUNTARY LEAVING

Claimants who leave their job voluntarily are subject to the same variable, five to eight week disqualification which appears in the ordinary misconduct provision. The benefit reduction provision which applies to voluntary leaving, however, reduces the total benefit by twice the weekly benefit amount rather than making the reduction dependent upon the length of disqualification.

In Minnesota, claimants who quit for compelling personal reasons are subject to the voluntary leaving disqualification. Benefits are paid only to those who quit for good cause. The present test of good cause is whether the reason for leaving was attributable to the employer. Claimants who quit their jobs for compelling personal cause should not be disqualified. Theoretically, involuntary would seem to incorporate those actions spawned by unforeseen personal or family emergencies. Moreover, as a matter of policy, it is desirable to assist persons who remain attached to the labor market. Minnesota’s law currently provides for illness as the sole case of compelling personal cause. A generalized provision could operate in the same way—that is, the claimant would not be disqualified from receiving benefits if otherwise eligible and the employer from whom the separation occurred would not be charged for benefits paid. The length of the period of disqualification should hinge upon the same considerations that apply for misconduct.

Thus far, disqualifications have been attacked because their variability is unrelated to the risk insured. However, in the next two provisions it will become apparent that even the classic indefinite disqualification can penalize if it operates overbroadly to subsume some legitimate cases of involuntary unemployment.

V. LEAVING TO ACCOMPANY SPOUSE

Under the Minnesota law any separation by a wife to assume

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33. See note 26 supra.
family obligations results in her unlimited disqualification. If the separation is due to pregnancy or to performing the duties of a housewife, other interests and obligations have apparently supplanted her desire for employment and withdrawal from the labor market can be reasonably presumed. This situation should be noncompensable since it violates both the principle of economic loss and that of pure risk. On the other hand, quitting to move to a new location with her spouse does not raise the same presumptions, since there is no indication of removal from the labor market. Properly analyzed, this is really a special case of the compelling personal cause situation. Therefore, this form of separation should be incorporated into a provision which exempts compelling personal cause from disqualification. Upon arrival at the new location, the wife should be allowed to collect benefits subject to the same conditions as all other individuals who have good cause for leaving their jobs. If such a provision is not adopted, the situation should be treated as an ordinary, voluntary-leaving separation which it resembles more closely.

37. A woman who leaves the labor force to become a housewife would not be generating any income while staying at home and performing her domestic duties. Therefore by being unemployed she is not losing any income she would otherwise have received. See text accompanying note 15 supra.
38. A pure risk is one which is constantly in existence (e.g., the threat of fire, tornado, death, illness) and can result only in a loss. In unemployment insurance, only the pure risks surrounding unemployment are insured against. These include job loss due to illness, economic recession, employer failure and generally those unemployment-producing circumstances over which the worker has no control. A decision to quit in order to assume the duties of a housewife does not fit this test. It is like any other voluntary decision to leave a job. See text accompanying notes 14 & 15 supra.
39. Out of 38 statutes that disqualify specially for quitting due to pregnancy, 19 of them (Alabama, Connecticut, Delaware, District of Columbia, Georgia, Louisiana, Maryland, Massachusetts, Michigan, Missouri, Nebraska, New Hampshire, New Jersey, North Carolina, South Dakota, Tennessee, Vermont, Washington and Wisconsin) do not extend it to unemployment due to marital obligations. U.S. Dep’t of Labor, Comparison of State Unemployment Insurance Laws ET-13 (BULLETIN NO. U-141, 1965).
40. Arkansas provides that when a woman leaves a job to accompany her husband to a new home and immediately upon arrival enters the labor market and makes an effort to secure work, she will be eligible for benefits. Ark. Stat. Ann. § 81-1106(e)(1) (1960). Hawaii will pay benefits again as soon as the woman registers for work and presents evidence of availability. Hawaii Rev. Stat. § 383-29 (1968).
41. Out of 50 states and the District of Columbia, 28 treat unemployment due to marital obligations as a voluntary leaving issue.
than quitting due to pregnancy or to assume the duties of a housewife.

Reasons have also been advanced for eliminating the distinction between men and women under the leaving-to-accompany-spouse disqualification. First is the theoretical argument that an insurance program should not inquire into sex but rather compensate wage loss for all those who meet the risk criteria. Second, there is increasing evidence that married women work out of necessity, not just to supply the household with extras. Thus, the same evils flow from their unemployment as flow from that of the male breadwinners. Third, the country needs the skills that women bring to the labor market and they therefore should be given equal treatment to encourage them to stay in the labor market.

VI. LABOR DISPUTE

Minnesota is one of only nine states that provide a blanket disqualification of all individuals who lose their jobs as a result of a labor dispute. Any such individual is disqualified for the period of time during which the labor dispute is in progress at his place of employment. The underlying theory is that the

42. Note that although Minnesota's law imposes an indefinite disqualification on the woman who leaves her job to accompany her husband to a new residence, it treats a husband's quitting to move with his wife as an ordinary voluntary leaving. In the one administrative decision obtainable by the author the minimum disqualification was imposed. Minnesota Dept. of Manpower Services Appeals Tribunal decision 1256-B-68 (1968).
43. The Minnesota Supreme Court recently upheld the constitutionality of the disqualification imposed upon a woman who left her job to move with her husband to a new home. Kantor v. Honeywell—Minn. —N.W.2d—(1970). However, the move was made for the purpose of self-employment in which the wife participated. The nature of employment was the running of a resort and the wife filed her claim only when the resort season ended. This situation is arguably more appropriately treated as quitting to assume domestic responsibilities than as quitting to accompany spouse to a new location.
44. HABER & MURRAY, supra note 3, at 274-75.
45. The others are, ALA. CODE tit. 26, § 214(A) (Supp. 1967); CAL. UNEM. INS. CODE § 1262 (West 1966); DEL. CODE ANN. tit. 19, § 3315(4) (1953); KY. REV. STAT. § 341.360 (1962); N.Y. LABOR LAW § 593(2) (b) (McKinney 1965); N.C. GEN. STAT. § 96-14(5) (Supp. 1969); OHIO REV. CODE ANN. § 4141.29(D) (1) (a) (Supp. 1969); WIS. STAT. ANN. § 108.04(10) (Supp. 1969).
47. Id. The test for determining establishment was set out by the Minnesota Supreme Court in Nordling v. Ford Motor Co., 231 Minn. 68, 42 N.W.2d 576 (1950). The decision as to whether a plant is an estab-
state should remain neutral in labor disputes, giving aid to neither worker nor employer. This policy alone, however, does not compel blanket disqualification. In fact, the provision arose out of the fear that payments in a trade or labor dispute would constitute such a drain on funds that they would be insufficient to meet benefits for other claimants.

Although the blanket provision does insure neutrality of the state in a labor dispute, it also operates to deny benefits to some nonstriking individuals, as illustrated by the following example. Assume that a strike by members of a production workers' craft union in a manufacturing concern forces a shutdown in production. A short time later, as a result of the production halt, a typist who is not a member of the striking union is laid off in the billing department because of lack of work. This typist meets all the tests of involuntary unemployment since she took no action which could have been reasonably expected to cause termination of her employment. Moreover, not being a member of the union involved, she has no guarantee of benefits or of being recalled to work upon a resolution of the strike. Nevertheless, she is disqualified from receiving benefits during the active course of the labor dispute.

The result seems inconsistent with the provision which allows benefits to all claimants who are unemployed due to an employer-initiated lockout. In violation of the state neutrality principle, recognition is made of the involuntary nature of a lockout. It is not readily apparent why the same recognition

Id. at 89, 42 N.W.2d at 588.
48. M. Hughes, Principles Underlying Labor-Dispute Disqualification 1 (1946) [hereinafter cited as Hughes].
49. Id.
50. Per conversation with Chief of Benefits, Minnesota Dept. of Manpower Services. However, once the dispute was settled she would be able to collect unemployment compensation if she were not immediately re-employed. Ayers v. Nichols, 244 Minn. 375, 70 N.W.2d 296 (1955).
should not be given to individuals who are laid off as a result of a labor dispute but who neither participate in the dispute nor have an interest in its outcome.

This disparity has been recognized by 41 states, the District of Columbia and Puerto Rico, which provide some form of relief clause for certain groups affected by a labor dispute. The relief provisions take into account three factors—participation, financing and direct interest. Benefits will be paid if neither the claimant nor any member of a grade or class of workers to which the claimant belongs, who were employed at the strike premises immediately before the stoppage, participates, finances or is directly interested in the outcome of the dispute. The two most important factors are participation and direct interest. The former is important for the obvious reason that payment of benefits to an active striker would be state subsidization of the worker's interest in a labor dispute. Direct interest is important because the payment of benefits to a group directly interested in the outcome of a labor dispute will give tacit support to the side with which its interest lies, resulting in state subsidization of one party's interests.

Financing does not seem to be crucial. Any aid given by a claimant will likely be in the form of union dues and the individual is then almost always participating or directly interested. The only other context would be where shutdown in one plant would precipitate layoff in another due to the plants' interrelation. In this case, however, the strike would not be at the second plant and therefore the labor dispute provisions would not apply to individuals laid off there.

VII. REFUSAL OF RE-EMPLOYMENT

The previous sections have dealt with the problem of disqualifications and benefit reduction and how they operate separately and together to penalize claimants. Although the re-

53. HUGHES, supra note 48, at 60-61.
54. Id.
55. See text accompanying note 48 supra.
56. HUGHES, supra note 48, at 67-68. This is the "establishment" concept. Under Minnesota law a claimant is disqualified only if the labor dispute is in progress at his establishment. See Nordling v. Ford Motor Co., 231 Minn. 68, 42 N.W.2d 576 (1950).
employment provision does contain a disqualification procedure, it is for a uniform seven week period and is not subject to any serious criticism. There is no benefit reduction as such. The re-employment provision, however, does contain the third type of penalty, wage credit cancellation. This is probably the most objectionable of the penalties. It creates all the hardships of the other two to a much greater extent.

The disqualification for refusal of re-employment in the Minnesota law provides that all base period wage credits attributable to any employer will be cancelled if the claimant, without good cause, refuses an offer of suitable re-employment from that employer. Good cause is defined as: (1) other employment, (2) illness which precludes acceptance or (3) new residence out of the employer's geographic area. Suitable re-employment is a job which provides substantially the same wages, hours and conditions as the claimant's former employment.

This disqualification fails to consider several important factors. Thus the following could result:

(1) Assume a claimant quits his job for good cause—he is either discharged for reasons other than misconduct or voluntarily quits because of culpable behavior on the part of his employer. Assume his employer later offers the claimant his old job back and the claimant refuses the offer. Despite the original separation for good cause, this situation does not fit within one of the statutorily specified categories of good cause. Thus, the claimant's employer could avoid charges by obtaining cancellation of the claimant's wage credits. If this employer was the claimant's sole base period employer, the claimant's entire claim

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58. Id. It is apparent that cancellation of wage credits may substantially reduce either the amount received by the claimant or the length of time he can potentially collect, or both. If the employer cancelled was the claimant's primary employer during his base period, it could result in invalidation of the claim, since a claimant must have in his base period at least $520 in total earnings and at least 18 weeks in which he earned $30 or more. See text accompanying note 4 supra. It is interesting to note that the increase in the credit week from $26 to $30 by necessity raised the minimum amount of earning for a valid claim from $520 to $540 (18 times $30 is $540). Apparently this escaped the notice of the legislature. However, since both 18 credit weeks and at least $520 in earnings is required, this is a moot point.
60. Id.
61. If there are no base period wage credits for an employer there is no basis to charge him under Minn. Stat. Ann. § 268.06(8) (Supp. 1970).
Any provision in an unemployment insurance system which in some cases provides relief for employers who, by their own actions, create unemployment cannot be justified.

(2) Assume a claimant quits his job without good cause, and the employer's offer of re-employment is made in good faith. Although this is precisely the situation which the provision was designed to encompass, the presence of the wage cancellation provision may still impose a penalty on the claimant. If the employer offering re-employment was the claimant's only base period employer, the claim would be completely invalid. If the claimant then obtains a new job, is subsequently laid off after a short time and then files a claim, he may not have enough credit weeks to establish a valid claim. If the employer is one of several base period employers, the claimant may have a claim either with a very small weekly benefit amount or of short duration, despite nearly continuous employment throughout his base period.

Wage credit cancellation is not necessary to protect the employer's interest because where the claimant's actions initiate the unemployment, his employer is not charged for the benefits. Although this situation is likely to arise very infrequently, the claimant is unfairly penalized when it does.

(3) Assume a claimant accepts employment with substantially better wages and working conditions than the proffered re-employment but that the offer of re-employment is made prior to the initial date of work on the new job. Since a claimant who

62. In a discussion with the Chief of Benefits, Minnesota Dept. of Manpower Services the author was informed that the re-employment provisions are interpreted and administered literally. Even though it seems as if the legislature never intended separations resulting from particularly reprehensible conduct on the employer's part to be subsumed by the re-employment provision, it is the author's opinion that the provision could be interpreted in such a way that prior separation-producing conduct by the employer offering re-employment would prevent the job from being considered suitable re-employment within the meaning of the act. Certainly when there is evidence that the re-employment is being offered solely in an attempt to obtain cancellation of the claimant's wage credits there is no compelling reason to treat it as a good faith offer and hence within the statute. The Minnesota agency is in agreement but points out that intent of this nature is difficult to prove.


64. In the case of voluntary quitting without good cause, the claimant will be disqualified for at least five weeks following the waiting week. There will be no benefits to charge since none will have been paid. Thereafter, even if benefits are paid, the employer is relieved of charges.
is neither ill nor outside the employer's geographic area must be 
working at a new job for refusal to be a good cause, the claimant 
would suffer cancellation of wage credits. The inequities are 
glaringly apparent. The claimant is penalized for obtaining a 
better job. The only alternative to the penalty is acceptance of 
less desirable job which seems to defy common sense.

The re-employment disqualification provides relief for em-
ployers at the expense of claimants—certainly not a laudable 
objective for a law which was intended to provide benefits for 
those involuntarily unemployed. Moreover, the employers re-
warded are sometimes those who do not deserve it, the ones 
originally at fault for the claimant's unemployment.

Refusal of re-employment is in substance simply a special 
case of refusal of suitable work. If the claimant refuses suit-
able employment with an employer other than a base period em-
ployer of the claimant, it is clearly a suitable work issue and the 
claimant is disqualified for seven weeks. But if the refusal 
is of suitable employment with a former employer, the claimant 
can be denied all wage credits attributable to that employer in 
addition to his seven week disqualification. Considering the 
claimant to be more blameworthy in the latter circumstance 
would appear to be quite irrational. The "wrongdoing" of the 
claimant is his creation of a risk by refusing an offer of re-em-


66. This is not an absurd hypothetical situation. The Chief of 
Benefits of the Minnesota Dept. of Manpower Services indicated in a 
conversation with the author that this situation has arisen and has re-
sulted in a cancellation of wage credits.

67. This special re-employment disqualification was part of the 
1965 amendments, Minn. Stat. § 268.09(1)(1) (1965). It should be 
pointed out that the same amendments provided that employers who 
were not at fault for a separation would still be charged for 20 percent of 
the benefits paid to the claimant. Minn. Stat. § 268.09(1)(3) (1965). 
This provision was temporarily invoked because the funds available for 
payment of unemployment compensation had reached a dangerously low 
provision may have been a compromise to placate employers. How-
ever, on the balance, it seems a somewhat harsh remedy in light of the 
adverse effect it could have on the rights of the unemployed claimant 
who is, after all, the individual whom the law was intended to assist. 
Nonetheless, the 20 percent charge provision was eliminated effective 
Ann. § 268.09(1)(3) (Supp. 1970). This removes any countervailing 
policy consideration for retaining re-employment as a separate issue. 
Hopefully it will be incorporated into the suitable work issue in the 
near future.


69. Id.
ployment but the nature of the risk created is exactly the same in both circumstances. Apart from the treatment of claimants, cancellation of the wage credits of the past employer who offers re-employment may discriminate against the other chargeable base period employers since their charges may thereby be increased. This is best illustrated by an example: Assume X was employed by two employers during his base period—employer A for 20 weeks, earning $2,400; employer B for 30 weeks, earning $4,800. Assume A and B both laid X off, so both are to be charged for benefits paid to X. According to the statutory formula, X is entitled to receive $57 per week in benefits for 26 weeks. Employers A and B are to be charged in proportion to their total wages. Therefore A will be charged only $19 (one-third of $57). If B then offers suitable re-employment and if X refuses the offer, B's charges are cancelled. If X remains unemployed after serving his seven week disqualification, X will have a valid claim since the wages earned with A alone are sufficient to maintain a claim. The claim is still for $57 per week but with only 14 weeks' duration instead of 26. However, A will now be the only base period employer and therefore he will be charged for all of the benefits received by X. If any employer other than A or B had made the offer of employment to X, benefits would still be based on wages received from both A and B, and A would then only be $19 per week.

The overall effect of the re-employment provision is not only to penalize the claimant in a special case of refusal of suitable work, but to place the power to create the special situation in the hands of the only group who can benefit—the base period employers. The most reasonable solution would be to eliminate the re-employment disqualification and let it be subsumed by the suitable work disqualification. This would provide equal treatment to all of the claimant's base period employers, including those who offer re-employment. The interests of base period employers would be adequately protected since they would be charged only for benefits paid.

VIII. CONCLUSION

The purpose of disqualification provisions should be to deny benefits to claimants who, by their own actions, have created the risk insured against. Minnesota's disqualification provisions, however, suffer from two major drawbacks—penalties and over-

70. See text accompanying notes 6-8 supra.
breadth.\textsuperscript{71} The penalty aspect arises in the context of disqualifications for refusal of re-employment, misconduct, and voluntary leaving. The overbreadth provisions of the law are of two different types—operative and theoretical. The disqualification for refusal of re-employment operates to include fact situations never intended by the legislature. Theoretical overbreadth is present in the domestic and labor dispute disqualifications.

\textsuperscript{71} The purpose of the risk definition is to make sure that the event which occurs meets the definition of the risk insured, not to set up limitations which exclude every possible event which might not meet the definition of the risk. The public policy considerations seem obvious. When a law is designed to provide economic help at a critical period of time to those individuals whose situations meet the definition of the risk insured, a program which adopts a negative view and attempts to exclude all those who do not fit the defined situations also excludes some who are eligible. This tends to destroy the policy behind the law which is to provide income maintenance for those eligible, not exclude those who are not.