

Statement of

Richard W. McHugh
Staff Attorney
National Employment Law Project, Inc.

On the Subject of

**Reforms for the Illinois Unemployment Insurance
Program: Alternative Base Period,
Domestic Violence UI, and Part-time UI**

Presented to

Illinois House of Representatives
Labor and Commerce Committee
Subcommittee on Unemployment Insurance under H.R. 699

November 28, 2000
Springfield, Illinois

National Employment Law Project, Inc.
55 John Street, 7th Floor
New York, NY 10038
(202) 285-3025 • www.nelp.org

NELP Midwest Office
P.O. Box 369
Dexter, Michigan 48130
rmchugh@nelp.org

Summary of Findings and Recommendations of National Employment Law Project, Inc.

Reforms for the Illinois Unemployment Insurance Program: Alternative Base Period, Domestic Violence UI, and Part-time UI

Recommendation 1: Illinois should adopt an alternative base period that uses lag quarter wages for claimants needing recent wages to establish monetary eligibility for UI.

Finding: Alternative base periods increase UI eligibility by using more recent earnings to measure monetary eligibility. In doing so, they treat lower-wage workers more equitably and assist welfare reform efforts.

Recommendation 2: Illinois should adopt an alternative base period that requires wage reporting supplemented with wage affidavits.

Finding: Assuming Illinois implements ABPs as recommended here, trust fund costs will increase 4 to 6 percent and administrative costs will not exceed several hundred thousand dollars a year.

Recommendation 3. Illinois should adopt amendments providing UI to survivors of domestic violence and sexual assault.

Finding: A comprehensive approach is required to address domestic violence and sexual assault in Illinois' UI law.

Recommendation 4. Illinois Should Update Its Eligibility Rules Regarding UI for Unemployed Part-time Workers.

Finding: While Illinois does not categorically deny UI to part-time workers, many part-time workers with good reasons for restricting their hours of work fall outside existing practices.

Reforms for the Illinois Unemployment Insurance Program: Alternative Base Period, Domestic Violence UI, and Part-time UI

Richard W. McHugh, Midwest Coordinator
National Employment Law Project, Inc.

Introduction

My name is Richard W. McHugh. I am Midwest Coordinator with the National Employment Law Project, Inc. NELP is a national support and policy advocacy organization. NELP provides analysis and advocacy on behalf of low-wage workers on a range of employment issues, including unemployment insurance. I am pleased to testify on behalf of NELP before this subcommittee of the Illinois legislature to support three reforms in unemployment insurance (UI) in Illinois. These reforms are an alternative base period, domestic violence UI, and eligibility for part-timers.

NELP is concerned with making unemployment insurance more relevant for today's workers and the changing economy. Since 1975, I have been involved with unemployment insurance, dislocated worker programs, and other public policies that promote economic security and stability. I was elected to membership in the National Academy of Social Insurance in 1990 and I have had the opportunity to testify and speak regarding UI before Congressional committees, state legislative committees, and the federal Advisory Council on Unemployment Compensation.

I wish to thank the subcommittee for the opportunity to appear before you again today. I testified before this subcommittee on September 7 in

Chicago. At that time I reviewed positive state UI legislation already adopted and under active consideration across the country in the last few years.¹ Today, I will concentrate my testimony on three proposed reforms; namely, an alternative base period, and domestic violence UI, and UI for part-time workers.

Recommendation 1: Illinois should adopt an alternative base period that uses lag quarter wages for claimants needing recent wages to establish monetary eligibility for UI.

Alternative Base Periods: The Basics

Illinois retains its traditionally defined base period, requiring claimants to earn \$1600 in the first four of the last five completed calendar quarters, with \$440 in the second highest base period calendar quarter. Twelve states have adopted so-called Alternative Base Periods (ABPs) that consider more recent wages in determining monetary eligibility for workers without sufficient earnings in their traditionally defined base periods. ABPs permit consideration of more recent wages in the calculation of monetary eligibility for workers without adequate base period wages in their traditionally defined base period.

How States Define Their Base Periods

	Traditional Base Period			Alternative Base Period	
First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Completed Lag Quarter	Filing Quarter
			Most states, including Illinois, end their base period after this quarter	Maine, Michigan, New Hampshire, New York, North Carolina, Ohio, Rhode Island, Washington, Wisconsin	Massachusetts, New Jersey, Vermont

ABPs recognize that for purposes of measuring a claimant's work force attachment, wages earned in a recent quarter are at least as relevant as wages earned over a year earlier. The experience of these twelve states demonstrates that alternative base periods offer a cost effective means to expand UI eligibility and to assist low-wage workers, new entrants, and reentrants to the workforce.

Alternative Base Periods: Benefits Outweigh Costs

According to a multi-volume study by Planmatics, Inc. commissioned by the U.S. Department of Labor in 1997, the costs of implementing the alternative base period are not significant when compared with the benefits offered to a wider range of claimants. Studies based upon the experience of the twelve ABP states provide us with sufficient information to estimate the impact of an ABP in Illinois. Based upon what we know about the experience of the twelve states that have already adopted ABPs, we believe that an alternative base period should be adopted in Illinois.

A. Benefits of ABPs

Finding: ABPs increase UI eligibility by using more recent earnings to measure monetary eligibility. In doing so, they treat lower-wage workers more equitably and assist welfare reform efforts.

ABPs expand UI eligibility modestly while increasing equity for lower-wage claimants. That's because judging monetary eligibility using a set amount of earnings (\$1,600 in Illinois) results in lower-income workers having to work more hours to reach monetary eligibility than higher-income workers. For example, the state average weekly wage is over \$600, so an average Illinois worker can

earn the \$1600 monetary eligibility requirement in under three weeks of work. However, a minimum wage worker employed 30 hours a week needs over 10 weeks of work to gain monetary eligibility in Illinois. As a result of this reality, lower-income workers need the recent earnings counted under ABPs to gain monetary eligibility more frequently than higher-wage workers.²

ABPs offer an improved UI safety net for many workers leaving AFDC under welfare reform measures. A paper published by the National Governors' Association last year stated that ABPs "could be particularly helpful for former TANF recipients who have earnings only in the past year." A study of welfare reform and UI by the non-partisan Urban Institute found that traditional ABP definitions, like those in Illinois, make "it difficult for low-wage workers who are paid on an hourly basis and who work intermittently—both categories that apply to former AFDC recipients—to meet the earnings required for UI eligibility." The study concluded that "an alternative base period would have direct implications for welfare reform. Adult welfare recipients who work are disproportionately low-wage workers who would benefit from easier monetary eligibility requirements."

ABPs especially assist low-wage and less-than-fulltime workers who are new entrants or re-entrants into the labor force. Based upon data available from Washington State and New Jersey, Planmatics concluded that ABPs "allowed a wider range of the unemployed, especially those with low wages, part-time, seasonal, and temporary work, to qualify for unemployment insurance benefits."

Depending on the type of ABP adopted and the existing base period definition, states have found that they have expanded UI eligibility from three (3) to eight (8) percent without creating excessive costs for either UI benefits or program administration. We now turn to the details regarding ABP cost estimates for state UI trust funds and administrative agencies as well.

B. ABP Costs

Finding: Assuming Illinois implements ABPs as recommended here, trust fund costs will increase 4 to 6 percent and administrative costs will not exceed several hundred thousand dollars a year.

Most studies have found that benefit costs to UI trust funds rose from 4 to 6% a year upon implementation of an ABP like NELP is recommending in Illinois. These estimated costs of ABPs are further reduced when consideration is given to the proportion of claimants that would have received UI eventually, simply by filing for UI benefits in a later quarter. For example, Washington State found that 39% of workers helped by their ABP law would have eventually filed a valid claim in a later quarter.

The Planmatics study looked at trust fund cost projections, in addition to looking at the costs actually incurred by five states that have already adopted ABPs. These computer simulations showed ABP trust fund costs ranging from 4 to 5.5 percent of estimated annual benefit costs. Trust fund costs are lower than expected eligibility increases because claimants using ABPs get lower than average UI benefits based upon their lower qualifying earnings.

Administrative costs have not proven to be a significant barrier to ABP implementation, either. The Planmatics study surveyed administrative costs and

found that actual costs of ABP implementation have been far lower than many past cost estimates in Illinois. Not all states kept good records or had estimates for all aspects of ABP implementation and ongoing administrative costs.

New Jersey, which kept the best records concerning its administrative costs, found that its one-time implementation costs were \$1.4 million, including the costs of software changes, personnel training, and hardware purchases. New Jersey also estimated its ongoing costs at \$1.26 million a year. Planmatics specifically noted that New Jersey's ABP includes 15 separate eligibility steps applied in sequence, significantly increasing New Jersey's administrative costs. Certainly, what we know of the 12 states with ABPs to date indicates that New Jersey's costs represent the upper limit, or worst-case scenario, on estimating the administrative costs of ABP implementation.

Other ABP states in the Planmatics study had much more modest administrative costs than New Jersey. Washington state estimated its annual costs at \$528,175. Ohio found it incurred \$563,312 in one-time charges for manual processing of claims while implementing computer changes, and estimated its ongoing costs at \$328,570. When Texas was considering an ABP in 1999, the Texas Workforce Commission estimated its ongoing ABP costs at \$153,000 a year. While these administrative costs are undoubtedly not trivial, they are far from excessive, given the substantial benefits to claimants and their families arising from ABPs.

We should keep in mind that these UI administrative costs are not tied to state UI taxes, but come from federal FUTA taxes. In fiscal year 2000, IDES'

federal base grant for UI administration was just under \$98 million. In theory and in fact, state UI agency administration is provided from these federal funds. This doesn't mean we should be indifferent to administrative costs, because in reality a state agency doesn't have the ability to simply pass its costs through to the federal government. However, federal UI administrative funding does mean that Illinois' costs of ABP administration will be paid from a considerable pot of federal money that also must pay for the rest of your agency's administrative operation.

Finally, the experience of ABP states shows that many administrative costs are subject to a high degree of state control, based upon the type of ABP implemented in Illinois. Not using filing quarter wages, but only lag quarter wages, as we advocate for Illinois, eliminates a good deal of wage information requests, saving trouble and expenses for both employers and IDES. As another example, allowing sufficient time to implement ABP changes avoids the hand processing of claims experienced in Ohio or retroactive payment of UI claims undertaken in some ABP states. Computer programming and staff training is cheaper if the ABP adopted is less complicated than New Jersey's or Massachusetts' ABPs.

In summary, states' experience with ABP implementation shows that trust fund costs in Illinois can be estimated at 4 to 6 percent of annual benefit costs. In addition, we believe that Illinois will have one-time ABP administrative implementation costs roughly in the range of several hundred thousand dollars and ongoing administrative costs no higher than this range as well.

Recommendation 2: Illinois Should Adopt an Alternative Base Period that Requires Wage Reporting Supplemented with Wage Affidavits.

C. Treatment of Wage Information under ABPs

States also have some decisions in the design of ABPs that impact on employers, as well as claimants. Because employers are the source of employee wage information needed to process UI claims promptly and accurately, employer advocacy groups frequently express concern about wage information requests to employers needed for processing ABP claims. Because ABPs use more recent wages on claims that would otherwise be denied, ABPs require a method to collect this recent information and get it into IDES computers in order to pay these claims. Thus, this wage information request problem involves only ABP claims filed in the early weeks of a calendar quarter. Later in a quarter after IDES has the wage information in its computer, ABP claims are processed by data processing in a fashion no different from non-ABP claims.

Most states that have adopted ABPs rely upon wage information requests to employers for those ABP claims that are filed before wages are reported by employers for the prior quarter. Ohio's is the only ABP law that uses wage affidavits from claimants as its sole method of collecting wage information. Most ABP states use wage affidavits for claims where the employer doesn't report wages timely or where they are needed to process the claim in a timely fashion.

Employers dislike wage information requests because businesses incur extra costs to provide wage information that they produce in another format in any event. However, relying solely on claimant wage affidavits as in Ohio causes many payment errors and benefit overpayments, resulting in higher ongoing administrative costs for both employers and the state. Claimants also face misrepresentation penalties in addition to repayment difficulties when claims are paid under wage affidavits.

States are advised to take a combination of steps concerning wage information on these early ABP claims. First, they can encourage or require more employers to report wage information digitally. Second, they can require wage information reporting earlier, especially for employers reporting on paper and not digitally. Third, states can rely upon wage affidavits for early ABP claims until wage information is reported by employers, issuing corrective payments when necessary.

Illinois can reduce ABP wage requests to employers, but NELP doesn't recommend adopting Ohio's complete reliance on wage affidavits. A prudent combination of steps can reduce wage requests. For example, Illinois could require employers reporting wages on paper to do so by the 15th of the month following the close of a quarter while giving those employers reporting digitally until the 30th to report. This will encourage more digital reporting.

Illinois could use wage requests for ABP claims filed in the first two weeks of a calendar quarter because there is no other way to pay these ABP claims promptly and accurately. Wage affidavits could be used for ABP claims filed in

the third and fourth weeks, because corrective action can be taken within a week or two. As a result, any overpayment (or underpayment) is relatively small and easy to correct. ABP claims filed in the 4th and 5th weeks of a new quarter could be held until wage information was timely reported, because these delays are minimal and would not create serious promptness issues with federal guidelines.

In conclusion, alternative base periods offer a worthwhile means of expanding UI eligibility with a focus on lower-wage workers, including former welfare recipients. We urge Illinois to adopt ABP legislation to increase the numbers of these workers eligible for UI benefits and strengthen its UI safety net.

Recommendation 3. Illinois Should Adopt Amendments Providing UI to Survivors of Domestic Violence and Sexual Assault.

States Are Taking Action on Domestic Violence and UI

The impact of domestic violence is not limited to the homes of domestic violence survivors. Domestic violence often "goes to work," so to speak, and its impact contributes to unemployment among survivors. A study of survivors of domestic violence found that abusive husbands and partners harassed 74% of employed battered women at work. One-quarter of battered women surveyed said they had to leave work at least partly due to domestic violence. Domestic violence caused 56% of survivors to be late for work at least five times a month, 28% to leave work early at least five days a month, and 54% to miss at least three full days of work a month. These absences can lead to discharges of survivors.

Rape and sexual assault are another aspect of violence directed toward women that all too often has consequences leading to unemployment. Survivors of sexual assault experience impacts related to employment similar to those found among domestic violence survivors. According to testimony before the U.S. Senate in 1993 during its consideration of the Violence Against Women Act, about half of all sexual assault survivors lose their jobs or are forced to quit work.

A growing movement nationwide has favored giving survivors of domestic violence the right to receive UI while they are relocating or otherwise making themselves safe from domestic violence. Fourteen states have passed new laws that explicitly allow survivors of domestic violence to leave their jobs due to violence without disqualification in some circumstances. These are California, Colorado, Connecticut, Delaware, Maine, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Oregon (by regulation), Rhode Island, Wisconsin and Wyoming. Maine and New Jersey have also addressed discharges due to the impact of domestic violence by treating these situations as discharges not involving misconduct.

These recent amendments to UI laws in other states recognize the reality that domestic violence causes loss of employment for a significant number of survivors. In many cases, the place of employment is the one location where the batterer knows the whereabouts of the survivor and the employer cannot or will not ensure a safe environment. In other cases, the workplace is the site for sexual assault, stalking or domestic abuse. In short, some survivors of domestic

violence and sexual assault must leave work in order to protect themselves or their families.

Other survivors are fired because of work-related incidents or because they miss work due to the impact of domestic violence or sexual assault. In some cases, unemployed survivors are denied UI because they cannot fully comply with work search and "able and available" UI eligibility requirements. For the most part, UI law in Illinois does not take these realities into account and would deny UI benefits under many of these circumstances.

Section 601 of the Illinois UI law requires that good cause for leaving employment be "attributable to" the employer, unless one of five existing legislative exceptions apply. Illinois' current statutory exceptions permitting good cause to excuse a quit are (1) leaving work on the advice of a physician, leaving to accept other work, (2) quitting to accept other work with sufficient earnings in the 2nd job prior to separation, (3) accepting a layoff under an inverse seniority provision of a collective bargaining agreement, (4) quitting due to sexual harassment, and (5) leaving unsuitable work accepted while on layoff.

Under each of these existing legislative exceptions, the separating employer is not charged for UI benefits paid under its provisions. Similar exceptions are needed in Illinois for quits and discharges related to domestic violence and sexual assault.

Finding: A Comprehensive Approach Is Required to Address Domestic Violence and Sexual Assault in the Illinois UI Law.

Fourteen states have laws that excuse quitting for reasons related to domestic violence, but most of these laws have significant restrictions in their application that limit their effectiveness. NELP believes that Rhode Island and New Jersey are the best laws "on the books" addressing voluntary quits and domestic violence. As mentioned, Maine and New Jersey have laws addressing discharges due to domestic violence or its consequences. NELP also support expanding the scope of domestic violence UI laws by adding consideration of separations related to rape and sexual assault here in Illinois. In addition, if Illinois wishes to comprehensively address domestic violence and UI it should also amend its UI "able and available" and seeking work eligibility requirement.

Washington State currently has proposals that DV survivors register for work and accept work that does not interfere with a survivor's ability to get medical or legal help, but that survivors of domestic violence not be required to engage in extensive job search normally required by state law. Massachusetts is also considering more comprehensive domestic violence UI legislation. NELP is assisting with both of these efforts.

NELP recommends that Illinois adopt comprehensive amendments addressing domestic violence and sexual assault in its UI law. In order to do so, Illinois will need to address its UI rules concerning voluntary leaving, misconduct discharges, and seeking work to ensure that survivors of domestic violence and sexual assault have UI benefits as part of their safety net. NELP is interested in

providing continued advice and assistance to Illinois in adopting measures to address domestic violence and sexual assault in the context of its UI law.

Recommendation 4. Illinois Should Update Its Eligibility Rules Regarding UI for Unemployed Part-time Workers.

Perhaps more than any other group, part-time workers are the victims of outdated UI eligibility rules. Despite their significant labor force attachment, part-time working adults (those over age 25) are half as likely to receive UI benefits as full-time workers. Nationally, only 12% of unemployed part-time workers receive unemployment benefits. Compared to other economically developed countries, part-time workers are treated more strictly in the United States under our UI programs.

Since the 1950s, part-time employment has tripled in the United States, now representing nearly one in five workers. Studies show that part-time workers are working almost as much as full-time workers. For example, part-timers work an average of 36 weeks of work a year, compared with 48 weeks for full-time workers, and they average 21.5 hours of work a week. Part-time workers also represent a large share of the unemployed—roughly one in five unemployed workers were working part-time prior to losing work. Women now represent 70% of part-time workforce (compared with 44% of full-time workers), and part-time workers are lower-wage workers, with 17.5% of part-time workers earning less than \$15,000 a year.

While reasons for working part-time vary, many individuals must restrict their hours of work due to partial disability, dependent care obligations, or lack

of acceptable child care. Given the growing demand for employers for part-time work, Illinois should recognize a broader range of circumstances in which unemployed part-time workers can draw UI benefits.

Finding: While Illinois does not categorically deny UI to part-time workers, many part-time workers with good reasons for restricting their hours of work fall outside existing practices.

Part-time workers most commonly run afoul of "able and available" eligibility rules or rules disqualifying those not seeking or accepting "suitable" work. Illinois has existing agency rules and case law that do not categorically render part-time workers ineligible, but Illinois does not permit restrictions of work search to part-time work for any valid reason, instead requiring that availability restrictions be for reasons "beyond the control of the claimant."

A number of states have part-time work within their definitions of availability, including California, Delaware, and the District of Columbia. Three states (Colorado, Massachusetts, and New Jersey) permit UI claimants with a history of part-time work to satisfy their availability requirements while limiting their work search to part-time work, while Montana permits a UI claimant to limit availability to less than a full week of work. California requires a UI claimant to show "good cause" for limiting his or her work search to part-time work. If a claimant can show good cause for limiting availability, then he or she remains eligible for UI, so long as there remains a "substantial field of employment" for which the claimant is available.

It's time for Illinois to revise UI eligibility rules regarding part-time workers. NELP advocates permitting unemployed part-time workers to receive UI benefits

so long as they have a valid reason for restricting their work search to part-time and they remain available for a substantial number of jobs in the labor market. In addition, UI claimants with base period part-time work should be permitted to restrict their availability to part-time work, so long as they remain available for a substantial field of employment.

Conclusion

Unemployment insurance is an important social insurance program that requires reform if it is going to better serve the needs of today's working families. Illinois should adopt an alternative base period to add fairness to its monetary eligibility requirement and assist unemployed lower-wage and women workers. Illinois should pass comprehensive amendments to assist survivors of domestic violence and sexual assault in receiving UI benefits. In addition, Illinois should broaden its UI eligibility rules regarding part-time workers. These three measures would improve the UI safety net in Illinois and we urge their adoption. Thank you for this opportunity to testify.

References

- Advisory Council on Unemployment Compensation, Collected Findings and Recommendations: 1994-1996 (Washington, D.C. 1996).
- Family Violence Prevention Fund, Workplace Resource Center, "Workplace Impact: Fact Sheet," www.fvvpf.org/workplace/facts.html.
- Janet C. Gornick, "Income Maintenance and Employment Supports for Former Welfare Recipients: The United States in Cross-National Perspective," in Rethinking Income Support For the Working Poor: Perspectives on Unemployment Insurance, Welfare and Work, ed. Evelyn Ganzglass and Karen Glass (National Governors' Assoc., Washington, D.C., 1999).
- Richard A. Hobbie, David C. Wittenberg, and Michael E. Fishman, "Temporary Assistance for Low-Wage Workers: Evolving Relationships among Work, Welfare,

and Unemployment Insurance," in Rethinking Income Support For the Working Poor: Perspectives on Unemployment Insurance, Welfare and Work, ed. Evelyn Ganzglass and Karen Glass (National Governors' Assoc., Washington, D.C., 1999).

National Employment Law Project, Women, Low-Wage Workers and the Unemployment Compensation System: State Legislative Models for Change (October 1997), available at www.nelp.org.

NOW Legal Defense and Education Fund, "State Laws Can Help Domestic Violence Victims At Work: Unemployment Insurance," (October 2000).

Planmatics, Inc. Summary of Findings on the Alternative Base Period (Vol. I); Impact of the Alternative Base Period on Administrative Costs (Vol. II); Impact of the Alternative Base Period on Employers (Vol. III), Impact of the Alternative Base Period on the Trust Fund (Vol. IV); Demographics Profile of Unemployment Insurance Recipients Under the Alternative Base Period (Vol. V); Handbook for Implementing the Alternative Base Period (Vol. VI) (Bethesda, Md., October 1997).

Wayne Vroman, Labor Market Changes and Unemployment Insurance Benefit Availability, UI Occasional Paper 98-3 (January 1998).

Wayne Vroman, Effects of Welfare Reform on Unemployment Insurance (Urban Institute, New Federalism Series A-22, May 1998).

Wayne Vroman, Alternative Base Periods in Unemployment Insurance: Final Report (Urban Institute, Washington, D.C., January 1995).

Young-Hee Yoon, Roberta Spalter-Roth, and Marc Baldwin, Unemployment Insurance: Barriers to Access for Women and Part-time Workers (National Commission for Employment Policy, Washington, D.C., 1995).

Endnotes

¹ A large number of states have adopted positive UI measures over the last few years. States are considering a number of proposed UI changes that are "family friendly" as well. NELP's July 2000 publication "State Legislative Highlights (1996-2000): Expanding Unemployment Insurance for Low-Wage, Women, and Contingent Workers" summarizes these changes and proposals in detail. It was attached to our September 7 statement to this subcommittee. A number of other publications and information on unemployment insurance developments and policy can be found at NELP's website <www.nelp.org>.

² Oregon and Washington State use hours of work, rather than a flat monetary amount in determining monetary eligibility for UI. This is the only way to completely eliminate discrimination against low-wage workers in determining UI monetary eligibility.