Seasonal Employers and Seasonal Workers Under State Unemployment Compensation Laws

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A recurring problem in the administration of the unemployment compensation program is whether workers who suffer regularly recurring spells of seasonal unemployment and are available for work during the off season should be compensated on the same basis as other workers whose unemployment is irregular. In most States, seasonal workers enjoy the same benefit rights as other covered workers, but a few States impose restrictions on seasonal workers. This article is a summary of a report on seasonality provisions which has been distributed by the Bureau of Employment Security to all State employment security agencies.

SEASONAL EMPLOYMENT has long been recognized as a special problem in unemployment insurance. One of the most significant differences in the coverage of Federal old-age and survivors insurance, on the one hand, and of the Federal Unemployment Tax Act, on the other, is that the latter applies only to employers who have eight or more employees in each of 20 different weeks in a tax year, whereas the former applies to all employers in covered industries regardless of the number of their employees or the length of their operations.

Only three State unemployment compensation programs (the District of Columbia, Hawaii, Washington) are as broad as old-age and survivors insurance, including all employers in covered industries who have one or more employees at any time of the year. All others exclude employers whose operations do not extend over a certain number of days or weeks within a year, or whose pay roll is below specified amounts within a calendar quarter or calendar year. Many of these laws follow the provisions of the Federal Unemployment Tax Act and, therefore, do not cover highly seasonal firms, such as resort hotels and cotton gins, operating for less than 20 weeks in the year.

All States except the District of Columbia (which has no agriculture) exclude employment in agriculture, one of the most markedly seasonal industries.

Even if a short-season industry is covered, persons who work in such an industry may be ineligible for benefits because they do not work for a sufficiently long time or do not earn enough to meet the qualifying requirement of the State law. Surveys in various States before the war showed that many persons working for canneries or beet-sugar refineries did not earn enough to qualify for unemployment benefits unless they supplemented these earnings through work in other covered industries (*1a–1e*).[1]

Several States have considered these over-all restrictions insufficient for dealing adequately with the problem of seasonal unemployment and have singled out additional groups of seasonal employers and seasonal workers for special treatment under their unemployment compensation laws. In doing so, the States have proceeded in one of three ways: they have modified still further the coverage provisions, or tightened up the eligibility requirements, or assigned to seasonal industries and seasonal workers a position intermediate between full coverage and exclusion.

The first method may be illustrated by an amendment added in 1940 to the Mississippi law to exempt cotton-gin workers from coverage altogether (*2*). The Wisconsin law excludes services in logging operations—a type of service which is covered by all other State laws. The Wisconsin law also excludes employment in establishments engaged in canning perishable fruits and vegetables if the worker is employed only during the active season and if he has earned less than $100 from other covered employers in the year preceding his employment by the cannery.

The California $300-a-year qualifying requirement, which went into effect as of December 1, 1939,[2] is an example of the second method. This requirement originated from a study of workers in fruit and vegetable canneries, which revealed that 60 percent of the women workers found no employment and had no desire to be employed outside the canning season, and that three-fourths of all the women had earned less than $300 during 1937 in canning work (*3, pp. 51–54*). The California legislature wanted to disqualify cannery workers from receipt of benefits if they worked exclusively in canneries and were not in the labor market during the off season. Instead of drafting a provision specifically designed for this type of seasonal worker, the legislature raised the general eligibility requirement and made it applicable to all covered workers.[3]

Florida considered following the California method and adopting a stricter eligibility requirement. However, the seasons in Florida are long; that of the citrus industry, for example, extends from October through June. It is generally recognized that an eligibility requirement should not be so restrictive as to exclude from benefit workers who are employed for 9 months in a year. Hence it was doubtful whether an eligibility requirement strict enough to exclude

*Program Division, Bureau of Employment Security. The author acknowledges gratefully the help received from State agencies which administer seasonality provisions. Much of the information presented here was furnished by these agencies through correspondence or personal interview.

[1] Italic figures in parenthesis refer to sources and related materials listed at end of article.

[2] Before that time, the qualifying wage was $156 for workers who had earnings in only 2, 3, or 4 quarters of the 2-year base period, or an average quarterly wage of $39 for workers who had earnings in 5 or more quarters of the 2-year base period.

[3] Because of increase in wages during the war, most of the workers who were intended to be excluded by the $300-a-year earnings requirement are again eligible for benefits. The agency is now attempting to find other means for accomplishing the result which was achieved only temporarily by increase in the qualifying-earnings requirement.

seasonal workers would be accepted by the Florida legislature (*4*, pp. 12–13).

So Florida, as well as a number of other States, followed the third method. They adopted special provisions to prevent seasonal workers from drawing what was considered to be an unduly large proportion of unemployment compensation funds or to protect seasonal employers against adverse experience ratings. Thus, instead of excluding cotton-gin workers altogether, Arizona designates the cotton-gin industry as seasonal and permits cotton-gin workers to draw benefits only during the active cotton-ginning season. Oregon, like Wisconsin, considered the lumber industry to be particularly hazardous from the point of view of unemployment insurance, but instead of excluding it Oregon grants seasonal status to employers in the industry whose operations are subject to wide seasonal fluctuations and curtails the benefit rights of lumber workers. Florida has twice changed the status of its citrus-packing and canning industry. Originally, this industry was covered on the same basis as other industries; then, during 1940 and the first 2 quarters of 1941, it was excluded as agricultural labor. On July 1, 1941, it was brought under coverage again, but services performed in it were classified as seasonal employment and the benefit rights of its workers were restricted.[4]

Provisions calling for special treatment of seasonal employers and seasonal workers under unemployment compensation were included in the original laws of 20 States and have been incorporated at one time or another in the laws of 33 States. Eleven of the 33 have repealed their seasonal provisions; only 1 of the 11, Kentucky, had ever put them into effect. At the present time, seasonality provisions are in operation in only 13 States but are included in the laws of 9 additional States, as follows:

Provisions in effect	*Provisions not in effect*
Alaska	Alabama
Arizona	Georgia
Arkansas	Maine
Colorado	Missouri
Delaware	New York
Florida	North Carolina
Hawaii	Ohio
Michigan	South Dakota
Minnesota	Vermont
Mississippi	
Oregon	
South Carolina	
Washington	

The seasonality provisions of Michigan are unique in merely exempting certain seasonal firms from experience rating without curtailing the benefit rights of the employees of these firms. All other States with such provisions reduce the benefits of seasonal workers. A worker is affected by the provisions only if his employer has been designated as seasonal under the State law. Moreover, in the majority of States, his benefits are curtailed only if he has had a substantial amount of employment with a seasonal employer. Commonly, the restrictions imposed on such a worker take the form of denial, during the employer's inactive season, of either all his benefits or at least that portion of his benefits which is based on wage credits derived from seasonal employment.

Although coverage and eligibility provisions constitute means for coping with the problem created for unemployment insurance by seasonal fluctuations in employment, this report considers only the special seasonality provisions included in a number of State laws. It discusses the reasons which have led State legislatures to adopt them, shows the results of their operation, analyzes their substantive content, and attempts to evaluate them in the light of actual experience.

Reasons Underlying Special Seasonality Provisions

Several reasons have been advanced for singling out seasonal workers or seasonal employers for special treatment under unemployment compensation. It is said, for example, that seasonal workers enter the covered labor market only during the season and do not seek employment the rest of the year. Or it is argued that their wages while they are at work are sufficiently high to carry them through the slack period without recourse to unemployment benefits. Some believe that, in the absence of special seasonal provisions, there is danger that payment of benefits to seasonal workers will leave insufficient resources for the workers suffering from cyclical or other types of long-continued unemployment. Some fear that benefits of seasonal workers during the off season might constitute a wage subsidy to seasonal industries and lower wage rates in those industries. Again, it is said that, since seasonal unemployment recurs regularly from year to year, it is predictable and hence should not be covered by insurance.

In some States, these reasons are overshadowed by a concern lest seasonal employers be required to pay adverse tax rates under experience rating, and the seasonal provisions were drawn primarily, or even exclusively, to improve the position of seasonal employers under experience rating.

Unavailability for Work During Off Season

All unemployment compensation laws require as conditions for the receipt of benefits not only that the worker meet the qualifying-earnings or employment requirement, which tests his attachment to the covered labor market in the preceding 1 or 2 years, but also that he be able to work and available for work at the time he claims benefits. Seasonal workers, like other covered workers, are subject to these requirements; if they do not hold themselves available for work during the off season, they are ineligible for benefits under all State laws. For example, a referee in Oregon held unavailable for work "a seasonal worker who was ordinarily not engaged in other work but who remained at home performing her household duties during the periods of the year when her industry and her specific employment therein were not in operation and who was not prepared to take any alternative work during the off season except in her own customary and regular work, which work did not then exist." The referee went on to say, however, that

[4] The status of the citrus-packing industry under the Florida law prior to 1940 is not quite clear. According to the decision of a Florida circuit court, the packing-house operations of a certain fruit company were excluded as agricultural labor under the original unemployment compensation law (*5*). There is no record of a reversal by a higher court of this decision. Yet the annual reports indicate that benefits were paid by the agency on the basis of wages earned in the citrus-packing industry prior to 1940 (*6*).

the presumption that a seasonal worker is not available for work in the off season "may be overcome by any evidence strong enough to establish a prima facie case to the contrary" (7).

The last part of the decision indicates that the availability test can be applied satisfactorily only by taking into account the individual circumstances surrounding a particular claim and that, moreover, a decision whether a seasonal worker is available for work in the slack season is often a matter of judgment rather than one of precise determination. Because of the difficulties surrounding the availability test when jobs are scarce, it is not surprising that this test has been applied to seasonal workers with different results in very similar cases. The West Virginia Board of Review, for example, denied benefits to a public school teacher during summer vacation; the benefits were to be based on wages earned in covered employment during the preceding summer (8). In similar circumstances a public school teacher in Kentucky was considered eligible for benefits during his summer vacation (9).

The difficulty of deciding whether a seasonal worker is available for work during the off season may be illustrated by a situation in Biloxi, a fishing and fish-canning town in southern Mississippi. The working people of the town are, for the most part, of central European or Louisiana French origin. The men are fishermen, and the women work in the fish-packing plants. According to regulations of the State Seafood Commission, no fishing boats may leave port between April 30 and August 16. The fish-packing plants close down for a few months each summer. Before the war, Biloxi offered no work opportunities during the summer months, but the opening of Keesler Field, a large army base outside Biloxi, changed the situation. The Post Exchange of the Field is willing to hire workers on a temporary basis; seafood workers who accept work there during the summer months are free to return to their regular work when the seafood plants open in the fall. Nevertheless, few of the seafood workers seek employment at the Post Exchange. The local employment office does not encourage them to do so, because it fears that once the workers have shifted to the Exchange, they might fail to return to the seafood industry. The workers, most of whom are housewives, do not want employment at the Field because it is rather far from their homes and the hours are less convenient for them than the hours at the seafood plants. Work in the seafood plants is paid by the piece and is arranged so that the workers do not have to keep to a fixed schedule of working hours. It is very well suited for combination with household responsibilities. Employment at the Post Exchange necessitates continuous absence from the home for about 10 hours a day.

Unquestionably, the women seafood workers of Biloxi would work at the seafood plants during the summer if the plants offered work at that time, but it is doubtful whether they are available for other types of work unless the working hours are flexible.

Doubt as to the availability for work during the off season of a group of pecan shellers was a factor in granting seasonal status to the pecan-shelling industry of Mississippi. A pecan-shelling plant in Natchez operates every year from October to May and employs about 90 Negro women during the season. The plant is subject to the Fair Labor Standards Act, and weekly wages vary from $16 to $20. After one of the recent seasonal shut-downs, a number of these workers filed claims for unemployment benefits. The employment office referred them to domestic service at $2 or $3 a week, which they refused to accept. The agency held that, in view of the low wages, the work was not suitable, and the women were permitted to continue drawing benefits. Later in the summer some women claimants were referred to cotton picking, in which they could have earned between $8 and $10 a week. Again the women refused to accept the offered work, but this time the agency held that for the women who had worked as cotton pickers within the preceding 2 or 3 years the work was suitable and that they were no longer eligible for unemployment benefits. A few claimants were permitted to continue drawing benefits because they had no previous experience in agricultural work. The women whose benefits were discontinued appealed. The referee held that they were unavailable for work and therefore ineligible for benefits. He did not go into the question of the suitability of the offered work. Then the women appealed to the Board of Review, which decided that cotton picking was not suitable and that the women were available for work.

Most of the women employed in the pecan-shelling plant are housewives. If they had accepted the work as cotton pickers, they would have had to leave on trucks at daybreak and would not have returned home until night. Thus, they would have been unable to look after household and children. The pecan-shelling plant is so close to their homes that they can dovetail employment in the plant with their household duties.

The decision of the Board of Review caused considerable dissatisfaction in Natchez, because workers were urgently needed then, both in domestic service and cotton picking. As a result of protests, the agency decided to declare the pecan-shelling industry seasonal, thus depriving the pecan shellers of benefits during the summer months.

The situation in Natchez was complicated by the fact that wages in domestic service and agriculture are exempt from the minimum of 40 cents an hour, which applies to wages in pecan shelling. Because of the discrepancy in wage levels, the availability of the workers could not be tested satisfactorily.

Regular unemployment during the off season is not necessarily proof of unavailability for work. A Delaware employer whose operations had been confined to canning fruits and vegetables planned recently to add meat canning to his other activities. He had been able to give employment only during the summer and early fall, but with the addition of meat canning he could operate on a year-round basis. Upon inquiry, he learned that most of his workers, many of them housewives who previously had had only summer employment, were willing to work for him during the winter as well.

The studies conducted by State agencies to investigate the relation of seasonal unemployment to unemployment compensation point to the conclusion that the group of workers who want to work only in seasonal

industries and only during a portion of the year is confined mainly to housewives working in canneries, resort hotels, or stores, and students who take jobs in the summer vacation.[5] Most workers attached to such highly seasonal industries as canneries, sugar refineries, or cotton gins shift to other employment when the seasonal industry closes down. In a significant number of cases, the dovetailing activity is wage work or self-employment in agriculture. Some workers migrate to other States in their search for off-season jobs.

Rightly or wrongly, some State administrators believe that persons whose claims against the State fund come from other States are not exposed to work opportunities as effectively as intrastate claimants and, therefore, that their availability is not sufficiently tested. Whatever the disadvantages of the interstate benefit payment plan in this regard, unemployment is difficult to determine for any group of workers who are self-employed during part of the year. This is true also of the disqualifying provision incorporated in many State laws under which benefits may be denied a claimant if he refuses to return to his customary self-employment. As stated in a discussion of seasonal provisions in Mississippi, "investigating numerous cases in which claimants may have failed to return to customary self-employment [on farms and elsewhere] . . . and disqualifying [them] . . . would involve excessive administrative expense and complication" (*10*, pp. 10, 14).

"Moreover, there is a greater possibility that individuals will seize an opportunity to refrain from taking their customary off-season employment if it is a job on a farm, since the compensation of farm labor is generally less than that of work in factories and most other employments in town and cities. The possibility must even be considered that an individual's weekly benefit income in unemployment compensation, being in many cases approximately one-half of his ordinary earnings in covered employment, might compare favorably in amount with what he could earn by returning to the farm" (*11*, p. 106).

The seasonal provisions which deny benefits to seasonal workers during the off season relieve the administrative agency of troublesome tasks. They fail, however, to differentiate between workers who are available for work during the off season and those who are not. Among the persons working for seasonal establishments there is a group (notably housewives and students) who do not want jobs when the season is over, and there are those who return to self-employment. However, many of the workers who are considered seasonal under State laws are in the labor market the year round. The administrative advantages of seasonality provisions are attained at the expense of the latter. The justice of a protest filed by a beet-sugar worker in Washington against the seasonal rulings cannot be denied: "I object to being classed as a seasonal worker. I believe I should be entitled to unemployment compensation when I cannot find work" (*12*).

Wages of Seasonal Workers

Special benefit restrictions for seasonal workers are justified sometimes by the assertion that their wages are high enough to permit them to save substantial amounts for the off season. Whether or not seasonality calls forth high wage rates in some industries, wages are comparatively low in the industries which have been held seasonal under the seasonality provisions now in effect. With only the exceptions of lumber workers in Oregon, whose wages appear to be slightly above the average for the State (*13*, p. 5), and of persons engaged in salmon canning and placer mining in Alaska, the wages of workers affected by seasonal provisions fall well below the average wages of other covered workers. The seasonal workers with which the State laws are concerned are, on the whole, unskilled and unorganized and, at least before the war, were poorly paid. The high-wage argument is invalid for them.

Predictability of Seasonal Unemployment

An argument occasionally advanced in favor of special provisions for seasonal workers is that insurance is not suited to the coverage of risks which are likely or certain to occur in the foreseeable future. This argument is derived, at least in part, from the experience of commercial insurance companies without recognition that it does not apply with the same force to compulsory social insurance. Commercial insurance companies, for which coverage is voluntary, must guard against the danger of being overloaded with poor risks. Compulsory social insurance, however, can achieve an even distribution of risks. By refusing to permit the good risks to stay out, it can extend coverage to the bad risks. The unemployment risk is high in seasonal and irregular industries, but in unemployment insurance this high risk is offset by the low risk in industries with year-round operation.

On the basis of past experience and an analysis of the current state of the labor market, a statistician may be able to predict, with a fair degree of accuracy, the volume of unemployment resulting from a seasonal shutdown. However, there is no way of knowing in advance which of the individuals employed by the seasonal firm will find other jobs during the off season and which will remain unemployed. Loss of the seasonal job may be a certainty for the individual worker, but if he is in the labor market throughout the year, he cannot foresee whether he will remain unemployed during the slack season. All cotton-gin hands, for example, know that the cotton gin will close down after the cotton has been harvested. Most find other work during the off season, but some remain unemployed. The individual worker does not know in advance to which group he will belong. His unemployment is by no means certain and, therefore, cannot be predicted.

What may be predictable with a fair amount of assurance is that a job will be available again at the opening of the next season. To the extent that the worker has a fairly good prospect of reemployment in the future, he may be in a position to obtain credit from tradesmen and others, but availability of credit is, of course, no reason for denial of unemployment benefits.

The seasonal provisions of North Carolina, which are not yet in effect,

[5] A California study revealed that there is little interchange of workers between the lumber industry and other industries of the State. A lumber worker who has no employment in his industry during the slack season usually remains unemployed until the season starts in the spring. It is not known whether this finding would be substantiated in other Western States (*3*, pp. 32–33).

are based on the concept of predictability of reemployment. An employer would not be granted seasonal status unless he had agreed to give work during a given season to all his employees who earned as much as $10 in the preceding season. At least 5 days prior to the opening of the new season, he would have to make the offer to his old employees through the U. S. Employment Service, and he would have to make as much work available to them as they had in the preceding season. Failure to live up to the agreement would result in loss of seasonal status.

Danger of Insolvency

Before the war, some States, where seasonal industries are an important part of the industrial pattern, had been concerned lest claims by seasonal workers endanger the solvency of the unemployment compensation fund. The same type of problem existed in States where one single heavy industry or irregular industries dominated the economy. Under present conditions, such considerations recede into the background, but this danger was real enough in some States before the war and probably will arise again when the war is over.

In Oregon, the largest covered industry is logging and lumber manufacturing, which accounts for more than 20 percent—together with food manufacturing, for nearly 29 percent—of the total covered pay roll. In 1938, the first year of benefit payments, benefits exceeded contributions by $170,000, or 3 percent, despite the fact that seasonal provisions had resulted in reducing all benefit payments by 4 percent. During the following year, the balance of the fund was amply restored, and contributions amounted to nearly twice the benefit payments. This was partly because, in the meantime, the Oregon agency had restricted still further the rights of seasonal workers so that, in 1939, 26 percent of all claims were adjudged seasonal and the estimated reduction in benefit expenditures amounted to 13 percent of the total (*13*, pp. 1, 3, 39). As a result of a 1941 amendment of the Oregon law, which limited the applicability of seasonal provisions, the number and proportion of seasonal claims have declined sharply.

In Mississippi, industries identified with cotton—apparel manufacturers, textile mills, cottonseed-oil mills, cotton compresses and warehouses, fertilizer plants, and cotton gins—account for 16 percent of all covered employment. During the year ended April 30, 1939, the first year of benefit payments, contributions exceeded benefits by about $500,000. In the absence of seasonality provisions, seasonal workers would have used up most of this surplus, and benefits would have been rather closely in line with contributions (*11*, p. 291).

In Florida, also, seasonality was a financial problem of considerable proportions before the war. All major industries show a marked decline during the summer, when the tourist trade is at its lowest ebb and the fruit and vegetable crops have been harvested. Contributions have been sufficient in every year to finance the benefits of that year, but in 1940 the margin was rather slim, since benefit payments amounted to 98 percent of contributions (*14*, p. 171).

The States which adopted seasonality provisions to balance benefit expenditures with contributions were not alone in having financial problems before the war. Because of lack of diversity in industrial activities, benefits occasionally exceeded contributions in the Rocky Mountain States, and this was true also of certain other States with a preponderance of heavy or irregular industries. Just as claims in these latter States may create financial difficulties, so claims on the part of seasonal workers may constitute a threat to the solvency of the unemployment compensation fund in States in which seasonal industries predominate. As long as each State has to provide against the risk of unemployment without the advantage of pooling its resources with those of other States, these States are faced with two alternatives if the threat materializes. Either contributions have to be increased or benefits curtailed. If increase in contributions is unacceptable, then the question is whether curtailment of benefits should apply to all covered workers or should affect only workers in seasonal industries.

Distribution of Benefits Among Seasonal and Nonseasonal Workers

Before the war, seasonal provisions were justified on the ground that they are needed to insure equitable distribution of unemployment insurance funds among the unemployed insured population. Proponents of seasonality restrictions argued that groups of workers who are unemployed regularly year after year should not be permitted to draw on the unemployment fund to the detriment of steadily employed workers who may have a long spell of unemployment during a depression. If compensation of seasonal unemployment is restricted, they said, funds would be available to lengthen duration and thus make better provision against depression and other types of long-continued unemployment. A New York report states the problem as follows: "What is an 'abnormal' drain on a pooled-fund system is a matter of policy and not a matter of statistics alone. The choice must be made between compensating recurrent unemployment each year or saving the fund for extensive and long-period unemployment, adjusting the duration of benefits to meet the long-period problem" (*1c*, p. 13).

To the extent that the fund is reduced by payment of benefits to workers who suffer intermittent or recurrent unemployment year after year, the benefit rights of steadily employed workers may be curtailed and stable industries help to finance the risk of unemployment in seasonal and irregular industries. But the elimination of seasonal unemployment from compensation under unemployment insurance can be justified only if it can be shown that this is a type of unemployment for which compensation is less urgently needed than for other types of unemployment. For most of the workers who are affected by seasonal provisions such evidence is lacking. They fall in the same category as workers in mining, construction, and many manufacturing industries subject to a heavy risk of unemployment.

Experience Rating

In some States, another financial consideration has influenced seasonal provisions. In those States it is not so much concern regarding the condition of the State fund as a desire to protect individual employer accounts against adverse tax rates under experience rating that has led to the adoption of seasonal provisions. As stated in a New York report, "the chief

demand for seasonal determinations comes from employers in irregular industries who desire to reduce the payments to their workers in order to avoid an unfavorable record if experience rating becomes effective in this State" (*15*). Another New York report declares, "The existence of seasonal regulations in the States is often directly attributable to the existence of experience rating in the State laws" (*16*). In the words of the Unemployment Compensation Division of North Dakota, ". . . there would probably be no necessity for benefit discrimination against seasonal workers under this or any other unemployment compensation statute were it not that the North Dakota statute, in common with similar laws in other States, provides for a reduction of contribution payments by employers based on previous employment experience. . ." (*17*). In a number of other States, also, the main purpose of seasonal rulings is to increase the possibility of tax reductions for seasonal employers.[6] (*18; 19; 20*, p. 27.)

Evidence on contribution rates of seasonal employers under experience rating is rather meager. Nevertheless, to the extent that it is available, it seems to indicate that, by and large, seasonal employers, along with employers in irregular industries, are subject to higher rates than other groups of employers.

Alaska, Mississippi, and Washington, which have seasonal provisions, do not have experience rating. Neither does New York, where the seasonal provisions have never been put into effect. In these States, seasonal provisions were adopted for reasons other than a desire to protect seasonal employers against adverse tax rates. As a matter of fact, some writers have doubted whether special seasonal provisions can be reconciled with experience rating. Thus, Matschek and Atkinson are of the opinion that "in a State with merit rating provisions, seasonal restrictions on benefits are a discrimination in favor of seasonal employers" (*21*). This view is also expressed in a report analyzing the seasonal provisions of Mississippi, a State without experience rating:

"It may prove impossible to reconcile this system with the theory and practice of merit rating. If an employer's rate is affected by the amount of benefit payments which have been charged to his account, the employers in the industry which receive special seasonal treatment will have a material and inequitable advantage as compared with employers in industries which have a seasonal variation of insufficient magnitude to bring them within the commission's definition of a seasonal industry . . ." (*10*, p. 14).

Seasonal provisions are in conflict with one basic aim of experience rating, which is said to be stabilization of employment. As one report points out, stabilization efforts have been successful chiefly in eliminating seasonal fluctuations. Seasonal provisions not only remove the incentive to stabilize from those employers who would otherwise be most affected by experience rating (*22*) but may even place a premium upon the concentration of employment in certain seasons and thus result in accentuating seasonal employment fluctuations. It must be admitted that most of the activities to which seasonal provisions have been applied are such that it is futile to strive for year-round operation. Industries in which operation is prohibited by law at certain times of the year (e. g., salmon fishing, horse racing) cannot stabilize, nor will efforts to stabilize succeed in industries which process perishable agricultural products available only at certain times of the year. Penalty rates under experience rating are imposed to allocate the costs of unemployment insurance in accordance with the severity of the risk of unemployment as well as to give the employer an incentive to eliminate or reduce fluctuations of employment. But when these tax burdens are "caused, not by acts of their own volition, but by the seasons of nature and the inherent nature of the cotton plant" (*20*, p. 30), seasonal employers have at times felt justified in demanding special concessions.

The question remains, of course, why seasonal unemployment should be the only type of unemployment singled out for special concessions to employers under experience rating. As stated in a Florida report, "while the seasonal fluctuations in Florida may be of such a nature that they cannot be controlled, the same is true of fluctuations caused by cyclical and technological factors" (*22*, p. 12).

The Gordian knot of conflicting experience-rating arguments was cut by Michigan when it suspended experience rating entirely for seasonal employers and made them subject to the basic tax rate of 3 percent regardless of their employment experience. It is significant that Michigan is the only State with seasonal provisions which does not modify the benefit rights of seasonal workers; they receive benefits on the same basis as other covered workers.

Considerations which may lead the legislature to lighten the tax burdens of employers should be separate and distinct from those which determine the unemployment benefit rights of seasonal workers. Only Michigan has recognized that action in one field can be taken independently of action in the other. All other experience-rating States have taken the attitude that tax relief of seasonal employers can be effected only through curtailment of benefits of seasonal workers. As a result, workers have been deprived of benefit rights though they earned these rights through work in covered employment and are available for work in the off season.

Results of Operation of Seasonality Provisions

Once a State has decided that seasonal industries or seasonal workers are to be singled out for special treatment under unemployment insurance, the crucial problem is to differentiate between seasonal and nonseasonal industries, and between seasonal and nonseasonal workers. During the war, production has been carried on at nearly full capacity the year round in many industries which formerly fluctuated widely from one period of the year to another. In many types of industrial activity, seasonal swings have lessened. While it may be too much to expect that production will stay at the same level after the war ends, such changes in seasonal swings cast doubt on the inevitability of these fluctuations.

The term "seasonal" industry is open to wide interpretations. In the parlance of economists, it includes all industrial activities which are characterized by annually recurring fluctuations of production and employment. Thus the coal-mining industry is said to be seasonal because it

[6] This was the origin of the seasonal provisions of Arkansas and South Carolina.

Table 1.—*Ratio (percent) of employees of firms with seasonal status to all covered workers, by State, and specified period*

State	Date	Employees of firms with seasonal status	
		Number	Percent of all covered workers
Alaska	Pre-war	15,000	50.0
Arizona	Average 1942	1,100	1.2
Arkansas	1943 (at peak of season).	15,000	[1] 3.9
Colorado	1943	9,000	3.0
Delaware	1943 (at peak of season).	6,000	5.0
Florida	January 1942 (at peak of season).	11,662	3.8
	August 1942 (at lowest point).	2,253	.7
Hawaii	July 1941 (at peak of season).	19,000	19.8
Minnesota	August 1942 (at peak of season).	11,195	2.4
	December 1942 (at lowest point).	476	.1
Mississippi	1941	12,715	5.0
Oregon	1941 (at peak of season).	[2] 34,137	[3] 9.2
South Carolina	1943 (at peak of season).	2,190	[1] .5
Washington	1942 (at peak of season).	28,500	4.0

[1] Based on preliminary estimates of number of workers with wage credits in 1943.
[2] Number of quarterly wage items reported by each seasonal employer during the quarter of 1941 in which his employment was greatest.
[3] Based on 372,000 workers with wage credits in the year ended Sept. 30, 1941.

reaches a peak of activity in the winter months which is followed by a decline in the summer. The wearing-apparel industry has two peaks, one in the early spring, the other in the fall. Other important industries which show definite seasonal swings are agriculture, construction, iron and steel, and automobile manufacturing. As a matter of fact, except for a few stable industries operating steadily the year round, such as banking and insurance, all industrial and much commercial activity has more or less marked seasonal characteristics.

The seasonal provisions of State unemployment compensation laws, however, do not embrace all seasonal activities. If they did, the entire structure of the laws would need to be changed since seasonal unemployment is one of the basic risks now covered. In Florida, seasonal provisions apply only to the citrus-packing and canning industry; in Delaware, Michigan, and Minnesota, only to activities concerned with the processing of agricultural products. The Arkansas law expressly specifies that the business of exploring for, and the mining of, coal and other minerals for use as fuel shall not have seasonal status. While the seasonal provisions in the other State laws are worded so that they might apply to any industry with seasonal characteristics, in actual operation the only important industries with seasonal status are fruit, vegetable, and fish canneries; cotton gins, cotton compresses, cottonseed-oil mills; tobacco processing; and sugar refineries. Logging has been held seasonal in one State but not elsewhere. A few minor industries, such as resort hotels, private schools, sports, and placer mining, are also considered seasonal in some States, and Oregon has granted seasonal status to a few employers engaged in construction. By and large, it may be said that the seasonal provisions have singled out for special treatment industrial activities dependent on the weather or on a supply of seasonally available animal or vegetable products, and industries whose periods of operation are limited by convention or law.

The number of workers employed by firms which have been granted seasonal status under State laws is shown in table 1. It is comparatively small everywhere, except in Alaska and Hawaii, for which the table gives pre-war figures. Because of the disproportionate expansion of construction, which is not subject to seasonality provisions, the industries subject to such provisions in these two Territories are comparatively less important now than before the war. No employment figures are available for the seasonal firms in Michigan, but in terms of annual covered pay roll they constitute only 0.3 percent of all covered employers (*23*, p. 1).

Not all employees of seasonal firms are treated as seasonal workers when they claim unemployment benefits. Table 2 shows the number of claimants to whom seasonal restrictions were applied in States for which this type of information could be obtained.

Seasonal provisions have their most drastic effects in Hawaii, where a claimant is regarded as seasonal if he has earned more than one-fourth of his base-period wages in the pineapple-processing industry. Before the war, this industry employed only about one-fifth of all covered workers but accounted for half of all claimants. Although the industry is covered by the law, practically no benefits are paid on the basis of wages earned in it. For the most part, the benefits of seasonal claimants who are eligible for unemployment benefits are based on wages other than those they earned in the pineapple-processing industry. Since the Hawaii fund has always been in excellent condition and benefit expenditures in no year exceeded 15 cents for every dollar collected, seasonal provisions were not needed for financial reasons. However, they are believed to have had substantial effect in reducing the tax rates of employers in the pineapple-processing industry under experience rating.

Table 2.—*Ratio (percent) of seasonal claimants to all eligible claimants, by State, and specified period*

State	Year	Seasonal claimants	
		Number	Percent of all eligible claimants
Arizona	1942–43	11	0.3
Colorado	1942–43	280	3.0
Florida	1942–43	2,180	5.6
Hawaii	1941	1,811	48.0
Mississippi	1941	3,578	9.5
Oregon	1942	2,975	8.3
Washington	1941–42	2,350	4.7

Although no figures are available for Alaska, it is probable that in the pre-war period the seasonal restrictions affected a not inconsiderable portion of the claimants and resulted in substantial curtailment of benefit expenditures.

In most other States, the seasonal provisions are of such limited application that they have little effect upon the status of the unemployment compensation fund. Their effect on employer accounts under experience rating is difficult to estimate. Experience rating began to operate in a period of full employment, and the general decline in benefits was a far more important factor than seasonal restrictions in reducing the tax rates of seasonal (and nonseasonal) employers.

Basic Standards for Seasonality Determinations

The standards to be followed by the agency in deciding whether or not an activity has a seasonal character are

laid down, at least in broad outline, in the laws themselves. Many States have interpreted and supplemented the legal provisions in rules or regulations. Here only the most important features of these provisions are analyzed and discussed. The examination will cover all seasonality provisions now included in State laws whether or not they are in operation. However, on important aspects, it will indicate the States which have put the provisions into effect.

Seasonal Unit

The feature which most sharply distinguishes one law from the other is the provision determining the unit of industrial activity to which seasonal status is to be given. This unit may be a whole industry, a group of employers within that industry, individual employers, branches or operating departments of individual employers, or, finally, occupational groups. The two extremes are illustrated by the laws of Oregon and Mississippi. Under the latter, seasonality determinations are made only for whole industries, such as fish packing and cottonseed-oil mills; once an industry has been held seasonal, all employers in that industry are subject to the seasonality provisions. Under the former, the unit for determination is an individual employer or any part of an employer's business which is substantially the same as the total operations of other seasonal employers.

More than half the laws with seasonal provisions permit the agency to make seasonal determinations for occupational groups. A common provision is to the effect that the determination may be made for an industry or occupation. A New York investigation of the implications of the seasonal provisions found that no seasonal occupations cut across industry lines and that the term "occupation" may, therefore, be understood as complementary to "industry" (*1c*, p. 3). This is how the problem seems to have presented itself to most States in which the seasonal provisions have been put into operation. No instance is known in which an occupational group received seasonal status under the seasonal provisions of the unemployment compensation law, but one of the most common and most disputed questions in actual operation of the seasonal provisions is how to differentiate between seasonal and nonseasonal occupations and seasonal and nonseasonal workers attached to a seasonal industry or employer.

For all practical purposes, therefore, the main difference in the seasonal provisions of the States is whether they apply to an entire industry or to individual employers. Of the 22 States with seasonal provisions, 14 call for seasonality determinations on an industry basis (Alabama, Alaska, Arizona, Arkansas, Delaware, Florida, Hawaii, Maine, Mississippi, Missouri, New York, Ohio, South Carolina, South Dakota). Eight of the 13 States in which the seasonal provisions are in operation make determinations on an industry basis (Alaska, Arizona, Arkansas, Delaware, Florida, Hawaii, Mississippi, South Carolina). In 3 of these, the seasonal provisions are designed for the benefit of 1 industry chiefly: in Delaware, food processing; in Florida, citrus packing and canning; and in Hawaii, pineapple processing and canning.

A report on the operation of seasonal provisions in Mississippi indicates that, in that State, the method of making seasonality determinations on an industry basis has been satisfactory. The agency encountered no difficulty in deciding whether an employer did or did not belong to a given seasonal industry. No major objections were raised to the procedure of establishing a uniform period of time as the normal operating season of an entire industry. Geographic differences were found to cause some variation in periods of operation of individual establishments, but these variations were not great enough to justify setting up two or more seasonal periods in one industry. Managerial policy and certain other factors were also found to cause variations in the time of operation, but these were not considered proper cause for giving special treatment to individual employers (*10*, p. 12).

Reports from other States point out certain difficulties inherent in making seasonality determinations on an industry basis. In Georgia, for example, the following industries were found to have definite seasonal characteristics: vegetable and fruit canning; cotton ginning; cottonseed-oil manufacturing; fertilizer manufacturing. Only the employers in the canning industry were found to operate on a strictly seasonal basis, for they do not combine canning with other seasonal activities. In the cottonseed-oil industry, however, many employers also carry on cotton ginning, fertilizer manufacturing, and other activities. The tendency on the part of Georgia employers to engage in different dovetailing seasonal activities renders the establishment of uniform seasons for an entire industry difficult, if not impossible (*24*).

A similar situation in Arkansas led the agency, in making its seasonal determinations, to attempt to isolate employment figures for the seasonal activity for which employers had requested a seasonality determination from employment figures for other activities. For example, the seasonality of ice manufacturing was determined solely on the basis of the number of employees engaged in the manufacture of ice. If the employer combines ice manufacturing with the retailing of ice, the employees engaged in the retailing of ice were omitted from the count. The agency encountered considerable difficulty in situations in which the employer used the same employees for both types of activity. In obtaining employment statistics for the past 5 years, it was sometimes difficult, if not impossible, to decide whether during a given week a worker was engaged in the seasonal or nonseasonal operations of the employer.

A provision to the effect that determinations can be issued only to all members of an industry or to none of them assures equal treatment to competing employers under experience rating. It may also, however, result in denial of seasonality status to a highly seasonal employer if he belongs to an industry which does not meet the seasonality standards of the law. In both Arkansas and Mississippi, the canning industry as a whole does not follow a seasonal pattern. Some employers in the industry, particularly the larger ones, process such a diversity of products that they operate practically all year round. Other employers—tomato canners, for example—are highly seasonal and

close down completely for long periods of the year.

A New York report states that a uniform seasonal period could not be fixed for a whole industry in that State without unintended gains to some workers and accidental discrimination against others (*1c*, p. 5). Information gathered by the Texas agency on seasonality showed "tremendously wide variation in the time of occurrence of seasonal operations as between the employers within a seasonal industry as well as in the duration of operations by employers within the industry." An Ohio report points out that a uniform ruling on an industry basis is nearly impossible because of differences in climatic conditions. Work that can be performed the year round in southern Ohio exhibits definite seasonal characteristics in northern Ohio.

The administrative difficulties to which these various reports call attention are avoided in the laws of 8 States which specify that determinations are to be made for individual employers (Colorado, Georgia, Michigan, Minnesota, North Carolina, Oregon, Vermont, Washington). Of the 13 States which have put the seasonal provisions into operation, 5 (Colorado, Michigan, Minnesota, Oregon, Washington) belong to this group. The Georgia, North Carolina, Oregon, and Washington laws permit separate seasonality determinations for operating units or branches of individual employers.

To the extent that employers with seasonal status enjoy advantages under experience rating not open to employers without such status, an individual-employer type of seasonal provision may result in differential treatment under experience rating of employers within the same industry. Moreover, in States which permit the issuance of seasonality determinations to employers in all industries, this type of seasonal provision has far-reaching administrative implications. At the time of the most widespread application of the seasonal provision in Oregon, 825 different employers had been granted seasonal status. Even in 1942, after the applicability of the seasonal provisions had been restricted, 242 different employers had seasonal status (*25*). Since determinations have to be reviewed periodically, they undoubtedly consume considerable time of employers who have to furnish the necessary employment records to enable the administrative agency to make a determination, and of the agency which has to review these data before issuing a determination.

Measures of Seasonality

States with seasonality provisions follow various methods for determining which industries or employers are to be regarded as seasonal. Four laws designate the industries with seasonal status. In Florida, citrus packers and canners have been singled out for special treatment; in Delaware, Michigan, and Minnesota, first processors of agricultural products. According to the terms of the laws, all citrus packers and canners in Florida and all food processors in Delaware have seasonal status. In Michigan, however, an employer engaged in the first processing of agricultural products is regarded seasonal only if he operates for not more than 30 weeks within a calendar year. Minnesota distinguishes between seasonal and nonseasonal operations of first processors of agricultural products and grants them seasonal status only if they suspend their seasonal operations entirely for at least 26 weeks each year. Colorado, Maine, and North Carolina follow a similar approach, although in these three States seasonality determinations may be issued not only to first processors of agricultural products but also to employers engaged in other industrial activities.

Laws which permit seasonality determinations on the basis of periodic reduction in employment usually contain, or authorize the administrative agency to adopt, standards for measuring, with objectivity and uniformity, seasonal fluctuations in industrial activities. The laws of Hawaii, Oregon, and Washington include specific and detailed instructions which the agency must follow in making seasonality determinations, leaving a minimum of discretion to the agency. The other laws, however (Alabama, Arizona, Arkansas, Georgia, Mississippi, South Carolina), incorporate only general standards for determining seasonality and leave it to the administrative agency to give specific content to these standards. From an administrative point of view, it is, of course, extremely important whether the law itself includes specific standards or whether the development of suitable standards is left to the administrative agency.

The States which use statistical formulas measure seasonal variations either in terms of the number of persons in employment at a particular time, man-hours worked during a specified period, or size of pay roll during one or more pay periods. To the extent that working hours are longer and weekly wages higher during the active season than in the off season, a measure in terms of number of workers imposes stricter seasonality standards upon employers than one in terms of man-hours or pay roll. In defining the peak from which the seasonal decline is measured, the States use an average figure for the 2 or 3 months during which employment is highest. The percentage by which employment must drop below the peak in order for the industry or employer to be deemed seasonal varies from 30 to 60. Employment must remain below the required level for periods varying from 8 to 26 weeks. Some State laws require that the decline occur at exactly the same period each year and that it be continuous; others do not.

In order to isolate the fluctuations in employment due to seasonal factors from those due to other factors, it is necessary to study the employment experience of an undertaking or industry over an entire business cycle. Only in Kentucky, which has repealed its seasonal provisions, did the State agency require employers to submit employment records for a 10-year period, from 1929–38, but even there special consideration was given to employers who could not submit reports for 10 years if they were able to furnish the necessary data for at least 4 years (*26*). The seasonal provisions now in operation measure experience over only 3 to 5 years in determining seasonality.

Beginning and End of Season

The laws with special seasonal provisions commonly provide that, during the off season, seasonal workers shall be ineligible for benefits, or seasonal wage credits shall be unavailable for benefit purposes. Therefore, the dates of beginning and end of the season must be fixed. Since these dates

determine for how long seasonal workers are to be held ineligible for receipt of benefits, establishment of the seasonal period is among the most important seasonal procedures. In two States, the administrative agency is relieved of all responsibility, and the seasonal period is established in the law itself. In States in which an industry must cease operations completely to receive seasonal status, the period during which productive operations are actually carried on is regarded as the seasonal period. Still other States apply statistical formulas to the employment experience of seasonal employers during the preceding few years in order to find the seasonal period. Some determine the seasons by conferences with industry and worker representatives. One State permits the employers to advise the agency each year prior to the opening of the season what the operating period will be.

In most States, the seasonal dates are determined on the basis of past experience. Since seasons are constantly changing depending on climatic and other conditions, the officially established dates may not correspond precisely to the operating period within a given year. Several States protect seasonal workers against loss of benefit rights by fixing seasons in accordance with the longest operating season within the preceding few years. Although most laws confine seasonal benefits to the active season, actually some seasonal workers may receive such benefits during the off season if the active season is shorter than usual in a given year. Also, if the season is unusually long, the restrictions may become effective before the operating period is over.

In States which determine seasonality on an industry basis, the seasons are usually fixed for entire industries, although they may vary by districts and occupations. If seasonality status is conferred upon individual employers, the seasons vary by employers and, in some cases, by individual plants.

Curtailment of Benefits for Seasonal Workers

All seasonal provisions but those of Michigan modify the benefit rights of seasonal workers, and in all States in which the provisions are currently in effect the modification curtails benefit rights. The laws attempt to differentiate between seasonal and nonseasonal workers, and the restrictions apply only to the seasonal workers. Again, on this subject, the discussion will analyze all seasonality provisions whether or not they are in operation, but on significant aspects, it will point out the States in which the provisions are in effect.

Definition of Seasonal Worker

Several laws define a seasonal worker as one who is ordinarily engaged in a seasonal industry and is not engaged in other work during that part of the year when the industry is not in operation. Laws of this type give the administrative agency a wide margin for interpretation. Other laws specify with precision how the agency is to differentiate between seasonal and nonseasonal workers on the basis of their wage records.

In all these States a worker, to be classified as seasonal, must have had a substantial amount of employment with a seasonal employer. Whether or not the amount of seasonal employment is substantial is measured in several States by the proportion it constitutes of all employment in the base period. The proportion varies widely from State to State. In South Carolina, for example, a worker is seasonal if in each of the last 2 years he earned more than half his total wages in the seasonal industry during the season and less than one-third in off-season employment outside the seasonal industry. In Hawaii a worker is seasonal if he has earned more than 25 percent of his base-period wages from seasonal employment. In Washington, the figure is 80 percent.

The relative liberality of definitions of this type depends not only on the length of the season but also on other aspects of the benefit provisions for seasonal workers. A worker in a short-season industry has more opportunity to earn enough outside of seasonal work to be regarded as nonseasonal than one who is attached to a long-season industry. Moreover, while the percentage in Hawaii is much lower than in Washington, the apparent illiberality of the Hawaii law may be partly offset by the provision in Hawaii permitting seasonal workers to draw benefits based on nonseasonal wage credits during the off season. In Washington, the benefits of seasonal workers are confined to the active season.

Some States exempt a worker from the seasonal-worker definition regardless of the amount he earned in seasonal employment if he earned from nonseasonal employment as much as the amount of wages required to qualify for benefits. Other States, instead of comparing amounts earned from seasonal and nonseasonal employment, determine a worker's status on the basis of the length of time which he has spent in each type of employment. In a few States a worker is classified as seasonal if, during a specified period preceding the determination, he worked only in a seasonal industry and only during the active seasonal period of that industry.

Four States (Arizona, Delaware, Georgia, New York) take into account not only the worker's covered nonseasonal employment but also his noncovered employment—even periods of self-employment, in Arizona—in determining whether the seasonal work is a sufficiently large part of his recent work history to put him in the class of seasonal workers. While the Georgia and New York seasonal provisions have not been put into effect, Arizona and Delaware actually operate under these provisions. Since the industries which have been held seasonal under State laws are closely connected with agriculture and many workers attached to seasonal industries are engaged in agriculture during the off season, such provisions are very important in safeguarding the benefit rights of seasonal workers who are actually working the year round although the records of their covered wages do not indicate this fact.

In differentiating seasonal from nonseasonal work, some States have determined that all work is seasonal which is performed for a seasonal employer during the season, regardless of type of activity or occupation. Others exclude certain types of activities or occupations from the definition of seasonal employment and count the time spent or wages earned from these activities or occupations in the same way as nonseasonal employment even though the work may be performed

for a seasonal employer during the active season.

Benefit Restrictions for Seasonal Workers

All States with seasonal provisions, except Michigan, modify the benefit rights of seasonal workers. Nine laws confer upon the administrative agency broad power to determine in what way the benefit rights of seasonal workers shall be modified (Alabama, Arizona, Georgia, Maine, Mississippi, Ohio, South Carolina, South Dakota, Vermont). In 12 States, however, the law itself specifies how benefit rights of seasonal workers shall be curtailed; this group includes the majority of States in which the seasonal provisions have been put into operation (Alaska, Arkansas, Colorado, Delaware, Florida, Hawaii, Minnesota, Missouri, New York, North Carolina, Oregon, Washington).

The most common provision is to the effect that seasonal workers shall be eligible for benefits, or that seasonal wage credits shall be available for benefit purposes, only during the established seasonal period. "Seasonal worker" is used, of course, as defined in the law or regulations. Workers who have had sufficient nonseasonal employment to escape the confines of the seasonal-worker definition qualify for benefits in the same way as persons who have not had any work in a seasonal industry.

Some State laws deny benefits to seasonal workers entirely during the off season, others allow them off-season benefits based solely upon nonseasonal wage credits. Among the former are the laws of Arizona, Delaware, Georgia, New York, Ohio, South Carolina, and Washington; these provisions are in operation in Arizona, Delaware, South Carolina, and Washington.

Colorado and North Carolina permit seasonal workers to draw benefits based on nonseasonal wage credits during the off season, and Alaska, Arkansas, Florida, Hawaii, Maine, Mississippi, Missouri, Oregon, and Vermont even make nonseasonal wage credits available for benefit purposes during the active as well as the inactive season. Three of the latter (Arkansas, Hawaii, Mississippi) specify that, during the active season, seasonal benefits are to be exhausted first.

Minnesota, instead of denying benefits to seasonal workers during a certain part of the year, reduces the wage credits from seasonal employment in the proportion which the seasonal period bears to the whole calendar year. For example, if a worker earns $360 during the season from seasonal employment in a cannery whose season extends from June 1 to September 17 (109 days), his wage credits for benefit purposes are limited to 30 percent of these wages, or $108. Benefits based on these reduced wage credits are available for benefit purposes at any time of the year. Reduction of wage credits results not only in lowering the benefit amount but also in making it more difficult for persons who work in seasonal employment to qualify for benefits.

Experience Rating

In all States which have seasonality provisions and in which experience-rating provisions are in operation, one measure of the employer's experience with unemployment is the amount of unemployment benefits paid to his former employees. In some States, the benefits paid to former employees are related to the pay roll of the employer to determine the employer's rate of contribution (benefit-ratio system); in other States, these benefits are deducted from the contributions paid by the employer, and the reserve standing to the employer's credit is measured against his pay roll (reserve-ratio system); still others compare the wages (within certain limits) of persons who become beneficiaries with the total pay roll of the employer (benefit-wage-ratio system). Whichever of these methods is used for computing the tax rate for an individual employer, the less his former employees receive in benefits, the greater the likelihood that a low tax rate will be assigned to him. Some States charge the entire amount of the benefits to the claimant's most recent employer or to the last employer in his base period. Others allocate the charges for benefits to all base-period employers, either in inverse chronological order or in the proportion which the wages paid by a particular employer bear to all base-period wages. Hence the curtailment of benefits of seasonal workers may affect the experience rating not only of seasonal employers but of other employers by whom the seasonal claimant was employed.

Among the 13 States with seasonality provisions in effect, only 3 operate without experience rating (Alaska, Mississippi, and Washington). One State, Michigan, exempts seasonal employers from experience rating altogether and subjects them to the basic 3-percent tax rate. One State, Colorado, provides that seasonal employers are to be charged only for benefits paid to seasonal workers in the active season and that nonseasonal employers are to be charged only for benefits paid to seasonal workers during the off season. The Arkansas law specifies that seasonal employers shall not be charged for benefits paid during the off season to seasonal workers, but there is nothing in this law to prevent nonseasonal employers from being charged for benefits paid to seasonal workers during the season. In Arkansas, seasonal employers enjoy a further advantage under experience rating in that their experience prior to the effective date of the seasonality provisions (April 1, 1943) will not be taken into account in computing their tax rates after 1946.

In the remaining 7 States, the experience-rating provisions apply to seasonal employers in the same manner as to all other employers. However, even though experience rating is not explicitly modified on behalf of seasonal employers in these States, the curtailment of seasonal workers' benefits may result in reduced tax rates for nonseasonal as well as seasonal employers.

Evaluation

In evaluating the special seasonality provisions in State unemployment compensation laws, the basic question is whether seasonal workers should get benefits under the same terms as other insured workers or whether their rights should be restricted. Whatever the arguments in favor of restriction, in practice most of the workers who are seasonally unemployed receive compensation on the same basis as workers who are unemployed for other reasons. Because seasonality provisions apply to only a few selected industries, this is true even in States where such provisions

are in operation. The fact that, before the war, contributions in such industries as coal mining, clothing, automobile manufacturing, and construction were insufficient in some States to pay for the benefits of their workers was one of the primary reasons for the establishment of pooled funds. Thus, for the most part, the States have taken the attitude that the high risk of unemployment in some industries is to be financed, in part, by the contributions of employers in more stable industries.

Nevertheless, many workers in seasonal industries are excluded from protection against the risk of unemployment. This exclusion is brought about in one of four ways: through limitations of coverage, through imposition of qualifying-earnings requirements, through availability tests, or, finally, through the special seasonality provisions which have been the subject of this report. In terms of the number of seasonal workers affected by these provisions, the first three are far more important than the last.

The coverage provision which specifically excludes seasonal firms, and hence seasonal workers, is the one exempting firms which operate less than a certain length of time (most commonly 20 weeks) within a year.

Exclusion of agricultural employment affects seasonal workers in two ways. In the first place, large numbers of agricultural workers are seasonally unemployed year after year; yet as long as agriculture is excluded they cannot be compensated for their unemployment. In the second place, many persons who work in covered industries part of the year are employed in agriculture the rest of the year. Because these workers receive credit for only the part of their earnings derived from covered employment, they are often ineligible for unemployment benefits. If the wages they earned in agriculture were added to their covered earnings, they would, in many instances, be able to meet the qualifying requirements of State laws. The only way to give this group of workers effective protection is to extend unemployment insurance to agriculture.

It should be emphasized that the provisions for exemption of certain seasonal employers did not spring primarily from a conviction that seasonal unemployment should not be compensated. Their main purposes are to exempt certain employers from the payment of contributions and to avoid the administrative inconvenience inherent in coverage. The effect upon the workers of these employers is incidental. Apart from the special seasonality provisions included in some State laws, the only provisions specifically excluding seasonal unemployment from compensation are the qualifying and availability requirements, both of which serve to withhold benefits from workers who are in the labor market for only a portion of the year.

In most State laws the qualifying requirement is expressed in terms of aggregate earnings from covered employment within 1 or 2 years prior to claiming benefits. In view of the wide diversity of wage rates and of the exclusion from coverage of many different kinds of employment, such a measure is at best only a rough gauge of a person's attachment to the labor market. It excludes persons from benefits who are in the labor market the year round, if a substantial portion of their working time is spent in noncovered employment, and also, on occasion, admits to benefits persons who are in the labor force for only part of the year and may not be available for work at the time they claim benefits.

All States deny benefits to persons who are unavailable for work. From a practical point of view, there are circumstances in which availability is extremely difficult to test, not only for seasonal workers but for many others. The States' seasonality provisions have been designed, at least in part, to cope with the problem created by persons who come into the labor market for part of the year only. In these attempts, the provisions fail to distinguish between those who are unavailable for work during the off season of a seasonal establishment and those who had worked for the seasonal establishment during the active season but seek and find other employment during the off season.

Benefits should not be granted during the slack season to persons who withdraw from the labor market while the industry to which they are ordinarily attached closes down. If a State agency has reached the conclusion that the claimant's assertion of availability and his registration for work at an employment office are inadequate to establish his availability, it may well consider the claimant's work history as an additional factor. A work history which reveals, in each of the last 3 years, periods without gainful employment regularly recurring during the off season of the seasonal industry casts doubt on the claimant's current availability. In such cases, the agency would seem to be justified in denying benefits to the claimant in the absence of evidence sufficient to demonstrate his availability during the current off season. In examining the claimant's work history, it is important to take account of the noncovered as well as the covered employment. The seasonal industries which have been the subject of special attention by the States are closely linked with agriculture and draw upon agricultural workers for their labor supply. Therefore, unless a record is obtained of noncovered employment, the picture of a person's attachment to the labor market is necessarily distorted.

The approach suggested here is similar to that which Arizona follows in determining who is a seasonal worker. It differs from the Arizona approach in that a claimant could submit such evidence of his current availability as might be regarded sufficient by the agency to invalidate any conclusion drawn on the basis of his work history alone. Thus, the worker could show that, in the preceding off seasons, he did not actually withdraw from the labor market or that his personal circumstances have so changed that he is now available for work.

Such a procedure is believed to be sufficient for the purpose of singling out truly seasonal workers. There would seem to be no need for the complicated procedures followed by the States in granting seasonal status to industries or individual firms and establishing their seasonal periods. The local office knows which firms are seasonal in its territory and what their operating seasons are. If it subjects the claims of persons who come from these firms at the end of the season to the special scrutiny suggested above, one of the purposes of seasonality pro-

visions—that of withholding benefits from persons who have left the labor market—would seem to be accomplished.

Among seasonal workers, the persons withdrawing from the labor market at certain times of the year are the only ones who should be disqualified from receipt of benefits. All other persons who work for seasonal firms should be entitled to benefits on the same basis as workers in steady jobs. This conclusion is inevitable if benefits are to be paid on a basis equitable to all covered workers.

However, this is not the only standpoint from which the States have considered the problem of seasonality. Experience rating has resulted in adverse tax rates for firms which, because they process products that are available for only part of the year, are seasonal of necessity. Such firms cannot offer year-round employment, and some seasonal employers have regarded as unjust the imposition of higher-than-average tax rates for failure to do so.

In most States contributions vary in accordance with employers' experience, and often the individual employer cannot change his operations sufficiently to receive a more favorable tax rate. Seasonal employers are not alone in being adversely affected by experience rating; the same is true of all employers in industries with fluctuations over which they have little or no control. The provisions included in all State laws which fix maximums beyond which the rates cannot go afford protection against ruinous charges.

Unfortunately, the dissatisfaction of seasonal employers with the results of experience rating, instead of being directed against its real cause—experience rating—has resulted in some States in curtailment of benefits to workers attached to seasonal firms. A State may be so impressed with the demands of seasonal employers for relief from adverse tax rates that it considers some action necessary. If it can be taken in full justice to all employers similarly situated, such action should be confined to adjustment in the experience-rating provisions. Irrespective of concessions to seasonal employers under experience rating, persons working for seasonal employers (except those who are not available for work at the close of the season) should be eligible for benefits on the same basis as other workers. Michigan is the only State with seasonal provisions which has recognized that action in one field can be taken independently of action in the other.

By far the most difficult question which seasonality poses in unemployment compensation is that which arises in States in which seasonal industries predominate to such an extent that it is impossible to provide benefits comparable to those payable in other States without a substantial increase in contributions. Because of the unusual employment opportunities created by the war, the problem has disappeared and will probably not arise again for some time to come. Even before the war such a situation existed in only a few States, notably Alaska, Florida, Mississippi, and Oregon.

However, the problem was by no means confined to States with a preponderance of seasonal industries. It also existed, and perhaps in even more acute form, in States with a concentration of heavy or irregular industries. Since the problem had to be answered within the limitation of individual State financial resources and industrial patterns, a satisfactory solution was difficult to find.

The situation has been confused by the introduction of experience rating, which has decreased the average contribution rate below the standard rate in every State that has adopted such a plan. Even in the early days, when experience-rating plans, in general, provided for penalty rates as well as reduced rates, total contributions were curtailed below what would have been collected without experience rating. The Federal unemployment tax of 3 percent was levied in order to provide the financial basis for an unemployment compensation system in every State. Little weight can be given to the argument that seasonal restrictions are necessary in order to safeguard the solvency of the fund when the State is reducing contributions through experience rating.

Before the war, the argument carried weight only in those States which, despite retention of the standard tax rate, found it difficult to balance contributions with benefits because of a persistently heavy risk of unemployment. Since increase in contributions above the standard rate was considered infeasible, the balance had to be restored through adjustment in benefits. It is unfortunate, however, that in making this adjustment the States with seasonality provisions singled out groups of workers with wage rates so low as to make it extremely unlikely that their own resources could carry them through a period of temporary unemployment. Fortunately, the reserves which all States have accumulated during the war are so large that curtailment of seasonal workers' benefits is no longer necessary from a financial point of view. With ample resources available, there is no longer need either to limit the benefit rights of seasonal workers or to retain other restrictive benefit provisions included in many State laws for the sole purpose of husbanding unemployment compensation funds.

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tures by the State, under its exclusive control; and approved coverage of specified maritime services under the Federal Unemployment Tax Act and a plan to cover maritime workers, through reciprocal agreements, under State unemployment compensation systems.

Other resolutions adopted by the Conference dealt with review of reporting requirements to reduce the burden of employer reporting and, in the interest of the economies possible through exchange of services, favored authorizing State agencies to accept Federal funds for services rendered to Federal agencies and reimbursement of Federal agencies for services rendered to State agencies.

The Conference also approved two resolutions on employment security adopted by the Governors' Conference at Hershey, Pennsylvania, last May. The first of these opposed any steps to centralize and federalize administration of unemployment compensation and urged the States, in order to meet post-war problems, to examine various aspects of their present systems, including solvency and possible need for higher wartime contribution rates; coverage; adequacy of benefit provisions; statutory provisions and administrative procedures to assure speed and efficiency of operation under peak-load conditions; interstate cooperation; and the relation between the State system and any Federal program for veterans' demobilization allowances. In the second resolution, the Governors urged that employment service functions be returned to the States as soon as practicable.