

Guide to Seasonal Employment Statutes



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The Honorable Sam Brownback
Governor
State of Kansas

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Unemployment Insurance for the Seasonal Workforce

Table of Contents

- Summary1
 - Findings
- Questions/Considerations.....2
- Seasonal Employment Statutes by State4
- Potential Seasonal Industries for Kansas5
- Briefing of State Seasonal Employment Statutes6
- Appendix.....12
 - Seasonal Industries in Kansas Methodology
- Sources.....13
- Recommended Reading16
 - Understanding Reasonable Assurance, State of Michigan. 2012.
 - Seasonal Workers and Unemployment Compensation, Ida Craven Merriam. 1938.
 - Seasonality Provisions in Unemployment Compensation Laws, State of Washington. 2005.

Summary

Findings:

- In states with specific seasonal employment statutes:
 - Workers are eligible to collect Unemployment Insurance (UI):
 - During the season
 - Only if all eligibility qualifications are met (monetary and nonmonetary)
 - Workers are generally ineligible to collect UI:
 - During the off-season
 - Unless claimant has earned adequate base-period wages from other employment
 - Or has earned adequate base-period wages with the seasonal employer, in the off season
 - Seasonal employment benefits have been exhausted
 - Workers in some fields cannot receive UI if **reasonably assured**¹ to return to work the next season;
 - Particularly education and sporting industries;
 - With some exceptions, such as bus drivers or those considered “non professional”
 - Most states specify a maximum amount of time that can be claimed as “seasonal”:
 - Some states specify timeframes of season per industry
 - Seasonal workers are not eligible for a Shared Work Program

¹ For more information on **Reasonable Assurance**, please see “Understanding Reasonable Assurance,” Unemployment Insurance Agency, Department of Licensing and Regulatory Affairs, State of Michigan. <http://www.michigan.gov/documents/uia/151_-_What_is_Reasonable_Assurance_for_Applying_a_Denial_Period_between_Seasons_392153_7.pdf. Also found under “Recommended Readings” on page 17.

Questions/Considerations

The following is a brief list of considerations compiled from the review of this study:

- 1) How will duration of season be defined?
 - Maximum length of time
 - Industry specific timeframes
 - Business specific timeframes
 - Other
- 2) How will seasonality affect taxes and other business processes?
- 3) How will seasonality affect employee benefits?
- 4) How will UI benefits be calculated?
 - Reduced UI amount due to seasonal wages
 - Eliminate seasonal wages in UI calculation
- 5) How will seasonal employers be determined?
 - Industrywide
 - Are businesses automatically determined as seasonal
 - › If so, will there be an opt-out option
 - Or, will employers have the option to apply/opt-in
- 6) What other requirements will be made for employers to be determined seasonal?
 - Can an employer apply for seasonal status if he/she is delinquent in UI tax payment
 - Can an employer apply for seasonal status if he/she employs only a small percentage of workers during the given season
 - Other requirements
- 7) Can an employee collect UI benefits if the employer did not inform them of seasonal status?
- 8) Who will make the determination of seasonality?
- 9) Can an employer have multiple seasons in one year?
- 10) How should employers notify employees?
 - What should this notification include
 - Will the state supply this notification
- 11) If a worker works year round, including during seasonal period, how will seasonal status affect potential benefits?
 - Likewise, will workers working year round in operations not relating to seasonal work, but in a business deemed seasonal, be considered a seasonal employee

Questions/Considerations

- 12) How would a broad/open-ended seasonality statute affect:
 - Employers
 - Claimants
 - Business Processes
 - State resources, including but not limited to:
 - › Appeals referees
 - › Judges/Attorneys
 - › Adjudicators

- 13) How would a narrow/specific seasonality statute that is not “open for interpretation” affect:
 - Businesses
 - Claimants
 - State resources, including but not limited to:
 - › Appeals attorneys
 - › Judges/Attorneys
 - › Adjudicators

- 14) What happens when an employee for an employer that is determined as seasonal, works outside of the seasonal period?

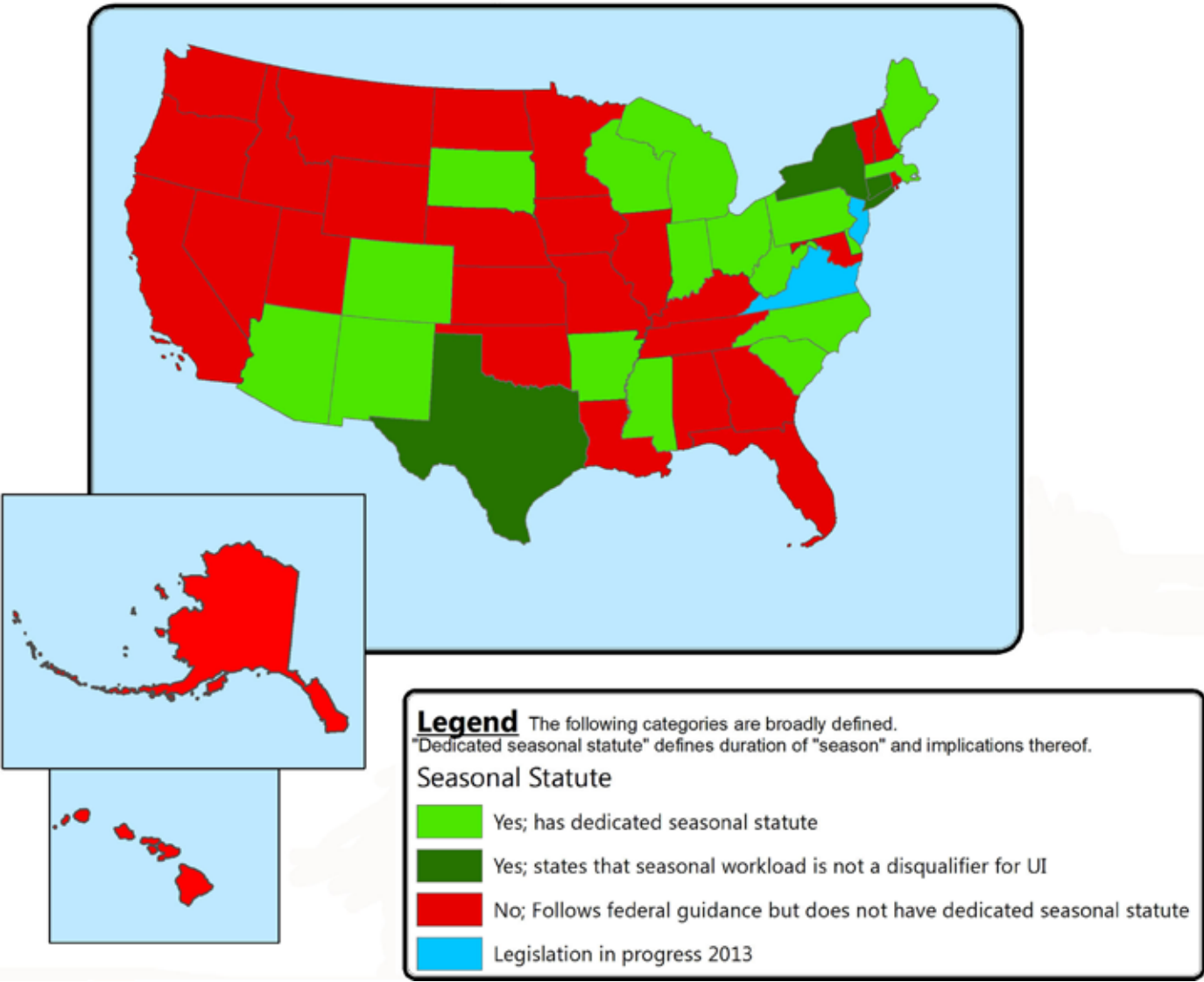
- 15) What happens with the UI benefits of employees who worked at a business prior to seasonal designation?

- 16) Will there be changes in the reporting or transmission of *Quarterly Wage Reports*?

- 17) What will this cost the state in resources (i.e., training, programming, etc.)?

- 18) What sort of press coverage will need to be involved to ensure public understanding of regulations and avoid bias or “spin?”

Seasonal Employment Statutes by State



Source: Kansas Department of Labor
 Labor Market Information Services

Potential Seasonal Industries²

NAICS Code	Industry Description	Proposed Season
111211	Potato Farming	July 1 – September 30
111219	Other Vegetable (except Potato) and Melon	March 1 – September 30
111421	Nursery and Tree Production	March 1 – November 30
111422	Floriculture Production	March 1 – June 30
114210	Hunting and Trapping	October 1 – March 31
115111	Cotton Ginning	November 1 – February 28
312113	Ice Manufacturing	May 1 – September 30
323117	Books Printing	November 1 – June 30
423920	Toy and Hobby Goods and Supplies Merchant Wholesalers	April 1 – July 31
445230	Fruit and Vegetable Markets	May 1 - October 31
511191	Greeting Card Publishers	September 1 – December 31
512132	Drive-In Motion Picture Theaters	March 1 – October 31
512199	Other Motion Picture and Video Industries	June 1 – August 31
532220	Formal Wear and Costume Rental	March 1 – May 31
541213	Tax Preparation Services	November 1 – April 30
541922	Commercial Photography	March 1 – May 30, November 1 – December 31
561421	Telephone Answering Services	October 1 – December 31
561730	Landscaping Services	March 1 – November 30
611110	Elementary and Secondary Schools	September 1 – June 30
611210	Junior College	September 1 – June 30
611610	Fine Arts Schools	September 1 – May 31
611630	Language Schools	September 1 – May 31
611710	Educational Support Services	September 1 – June 30
711110	Theater Companies and Dinner Theaters	October 1 – July 31
711211	Sports Teams and Clubs	April 1 – December 31
711212	Racetracks	April 1 – October 31
713110	Amusement and Theme Parks	April 1 – August 31
713120	Amusement Arcades	March 1 – October 31
713910	Golf Courses and Country Clubs	March 1 – December 31
713930	Marinas	April 1 – October 31
713990	All Other Amusement and Recreational Industries	April 1 – October 31
721211	Recreational Vehicle Parks and Campgrounds	April 1 – October 31
721214	Recreational and Vacation Camps (excluding Campgrounds)	April 1 – August 31
721310	Rooming and Boarding Houses	August 1 – May 31
<i>Source: Kansas Department of Labor; Labor Market Information Services</i>		

² See Appendix (page 12) for methodology

Briefing of State Seasonal Employment Statutes

ARIZONA³:

Season is defined by a “substantial slow down⁴ in operations due to seasonal nature of employment.”

Employees: Seasonal employees are eligible to collect UI, if unemployment occurs within “season,” provided all other requirements are met.

Employers: To be considered for seasonal status, the employer may not be previously delinquent in UI tax payments and must also have an experience rating account chargeable with benefits through 12 consecutive months. Employers deemed seasonal are required to provide employees with written notification of seasonal status.

[Source: (Arizona State Legislature, 1993)]

ARKANSAS:

Season is defined per industry by the Director of the Department of Workforce Services. Typically, seasonality is determined when an industry “customarily lays off 40 percent or more workers for at least four consecutive months.” Seasonal businesses may be open either only for the seasonal period or all year.

Employees: Seasonal employees are eligible for UI, for wages collected within “season,” provided all other requirements are met and unemployment occurs during the season. If an employee works enough throughout the year, he/she may be eligible for benefits as a “non-seasonal” employee with the seasonal employer.

Employers: If determined to be a “seasonal employer,” wages must be documented in “special” quarterly reports as paid “in season” or “out of season.” A notice stating seasonal determination and the implications thereof must be posted that is easily within view of all employees. The employer is supplied the notice by the Department of Workforce Services.

[Sources: (Arkansas Department of Workforce Services, 2010) (Arkansas, 1989) (State of Arkansas, 2012)]

COLORADO:

Season is defined as “less than 181 calendar days,” for all industries, within a calendar year.

Employees: Seasonal employees are eligible for UI if unemployment occurs within “season,” provided all other requirements are met. Working longer than or outside the designated season enables employees traditional unemployment benefits any time of the claim year. “If a claimant is paid a combination of seasonal and nonseasonal wages, all wages are treated as nonseasonal.” If an employee is offered a suitable job and refuses, UI benefits can be “postponed or reduced.”

³ Information for Arizona seasonality is with regard to transient lodging (i.e.,- hotel) industry.

⁴ Substantial slowdown is defined as “a reduction of the employer’s work force based on the number of full-time equivalent employees equal to at least two-thirds of the average of the highest twelve weeks of employment during the one year period prior to such slowdown.” (Arizona, 1993)

Employers: Seasonal employers must operate 181 days or less, or have occupations that workers are employed less than 181 calendar days. *Request for Seasonal Determination* form must be submitted to Department of Labor and Unemployment. If determined to be a “seasonal employer,” wages must be documented and taxes paid according to the proper season. If work is available and offered to a claimant and the claimant declines or cannot be reached, the employer must contact the UI program.

[Sources: (Colorado Department of Labor and Employment: Unemployment Insurance Operations, 2010) (Colorado, 2012)]

DELAWARE:

Season is defined as the duration of the first processing of agriculture or seafood products.

Employees: Seasonal employees are eligible for UI if unemployment occurs within season, if earning 75 percent or more of base period wages during this time – provided all other requirements are met. An employee is considered seasonal if they work for a seasonal employer, even if they do not work directly with a specific seasonal product.

[Sources: (State of Delaware: Department of Labor) (Delaware, 2012)]

INDIANA:

Seasonality is limited to a maximum of 26 weeks within a calendar year.

Employees: Seasonal employees are eligible for UI if unemployment occurs within “season,” provided all other requirements are met.

Employers: May qualify as seasonal if all or part of business is within an annually recurring season and is of “seasonal nature” or affected by climatic conditions. Employer may apply for multiple seasons if the total of all seasons is less than 26 weeks.

[Source: (State of Indiana: Workforce Development, 2012) (Indiana, 2012)]

MAINE:

Seasonality is limited to a maximum of 26 weeks within a calendar year and specific to industry. Examples of seasonally determined industries include, but are not limited to:

- Apple Harvest- September 1-October 20
- Summer Recreation- June 15-September 15
- Amusement Parks- May 10-November 3
- Wreath Making, Decorating, Boxing, Tipping- October 1-December 24

Employers: Must report wages seasonal/non-seasonal appropriately. Wages are considered non-seasonal if the service is not associated with the seasonal part of business, or if performed partially or entirely outside of the season. Seasonal work performed in the season and associated with the seasonal portion of business are to be reported as seasonal.

[Sources: (Maine Department of Labor, 2009) (Maine, 2012)]

MASSACHUSETTS:

Seasonality is limited to a maximum of 16 weeks within a calendar year.

Employees: Seasonal employees are eligible for UI, for claims filed within the season, provided

all other requirements are met. If claimant applies for UI outside of the season, he/she is eligible for non-seasonal portion of wages only.

Employers: Must notify employees, in writing, of seasonal status either before the start of work or immediately following seasonal status determination. The written notice must state that the employee has been hired for a specified season and will only be working for that season, state the duration of the season, that the employer is a certified seasonal employer and that if the employee applies for UI and is denied, he/she may “appeal his or her designation as a seasonal employee.”

Determination is made by the Commissioner and if employer’s season changes to an excess of 16 weeks, the Commissioner must be informed. If seasonal status is granted, employer must still pay appropriate wage contributions and file appropriate reports. Seasonal status does grant the employer the “opportunity to be relieved of some unemployment benefit charges” due to seasonal layoffs.

Other notes: “Whenever an employer is determined to be a seasonal employer, the following provisions apply: (1) The seasonal determination becomes effective the first day of the calendar quarter commencing after the date of the seasonal determination. (2) The seasonal determination does not affect any benefit rights of seasonal workers with respect to employment before the effective date of the seasonal determination.”

[Source: (Massachusetts Department of Labor and Workforce Development, 2006)]

MICHIGAN:

Seasonality is limited to 26 weeks if employer operates solely during that time period; A season is defined as 20 weeks if the employer employs at least 50 percent of its workforce during said season.

Employees: Seasonal employees are eligible for UI, if unemployed within designated “season,” provided all other requirements met. If employee begins before or ends after designated season, he/she is eligible for traditional UI benefits. If reasonable assurance (stated as “*not a guarantee of employment*” rather, “*a ‘good faith statement’ of intent that [comparable] work will be available... the next season*”) is given, worker is ineligible for UI. However, if reasonable assurance is stated and no comparable work is available the next season, worker may be eligible for retroactive benefits. If employers do not properly post or give workers proper notices, employee can be granted seasonal UI benefits (as described below).

Employers: must apply for seasonal employer status. This application form must be posted in a conspicuous place where all workers can see. If the employer is determined to be seasonal, a notice that includes statement of designation, range of the determined season and statement that retroactive benefits may be owed to a worker if work is not made available for the next season, must be posted in a conspicuous location where all workers can see. Employees must provide new hires with a notice of potential ineligibility from unemployment benefits, prior to the start of work. Employers must provide all employees with written copy of notice or any changes to status. Failure to comply will result in claimant being granted UI benefits.

If the employer operates business all year, 50 percent or more of employees must be hired during the seasonal period to be considered for seasonal status. If the employer operates only during a given season(s) the maximum is 20 weeks.

[Sources: (State of Michigan Unemployment Insurance Agency, 2012) (State of Michigan Licensing and Regulatory Affairs, 2012) (State of Michigan Unemployment Insurance Agency, 2012)]

MISSISSIPPI:

Seasonality is applicable for two industries – cotton ginning and service staff (i.e.- concessionaires) for the professional baseball industry. Seasons are defined as September 1-December 31 for cotton ginning and April 1-September 15 for the professional baseball industry.

Employees: Those employees deemed seasonal are eligible for UI, provided all other requirements are met, unless interstate claimants. Seasonal UI is based on earnings during seasonal period. Non-seasonal UI is based on non-seasonal wages.

Employers: Required to provide the Department of Employment Security the type of service and period of employment of a claimant, within 14 days of the claimant filing for UI, in the baseball industry. Applicable employers are required to keep separate quarterly wage reports; Wages inside the cotton ginning season for the cotton ginning industry, wages outside the cotton ginning season for the cotton ginning industry, wages for any other employment that is covered by UI benefits. If an employer receives a notice of UI claim, the employer must provide information about the separation or lack of suitable employment, complete with former employee's SSN, within 14 days.

[Source: (Mississippi Department of Employment Security, 2010)]

NEW YORK⁵:

All employment is covered under UI unless otherwise specified by specific industry or traditional UI provisions. Additionally, if a claimant is reasonably assured to return to work with the typical seasonal employer, said claimant is permitted, but not required, to partake in the otherwise mandatory reemployment services programs.

[Sources: (New York) (New York Department of Labor) (State of New York Department of Labor, 2012)]

NORTH CAROLINA:

Seasonality is limited to 36 total weeks within a calendar year.

Employees: Seasonal employees are eligible for UI, provided all other requirements are met. Seasonal UI is based on earnings during seasonal period. Within seasonal period, 25 percent or more base period wages must be earned. Non-seasonal UI is based on non-seasonal wages. The Division decides seasonal status of claimant. If determined to be seasonal, anyone replacing the initial claimant's job position is also to be determined as seasonal unless said successor files a request to cancel the position's seasonal status (and is approved). Pending claims do not fall under the provision nor can the provision be retroactive.

Employers: If an employer is determined to be seasonal, any interested party may, within 10 days of the beginning of the "first period of production," file an application for the determination to be reviewed.

Seasonal UI benefits are determined using the following process: First, divide the seasonal wages in the claimant's base period by all of his base period wages. Then, multiply that number by the maximum benefits payable in the claimant's benefit year. Round down to the nearest dollar amount. The result is the maximum amount to which the claimant is eligible.

⁵All employment (including seasonal work) is considered covered under unemployment compensation unless otherwise specified. (New York).

⁶ See "Covered and Excluded Employment under the UI Law" chart found at <http://www.labor.ny.gov/ui/dande/covered1.shtm>

Non-seasonal UI benefits are determined using the following process: First, divide the non-seasonal wages in the claimant's base period by all of his base period wages. Then, multiply that number by the maximum benefits payable in the claimant's benefit year. Round down to the nearest dollar amount. The result is the maximum amount to which the claimant is eligible.

"...by multiplying the maximum benefits payable in [a claimant's] benefit year ... by the percentage obtained by dividing the seasonal wages in [the claimant's] base period by all of his base period wages."

[Source: (North Carolina State Legislature, 2012)]

OHIO:

Seasonality is limited to 40 weeks within a 52-week period and to employment limited by climatic conditions or recurrent seasonal nature of the business.

Employees: Seasonal employees are eligible for UI "within the longest seasonal periods which the best practice of such industry will reasonably permit," provided all other requirements are met. UI may not be collected in-between seasons, if an employee only works seasonal jobs.

Employers: Must apply to be considered seasonal. Seasonality is determined by the Director of Job and Family Services. The business must be primarily operated as seasonal.

[Source: (Ohio State Legislature, 2011)]

PENNSYLVANIA:

Seasonal Commercial Fruit/Vegetable Canning or Freezing Services Industry:

Season is limited to 180 days or less.

Employees: To be considered a seasonal employee, work must be in the commercial fruit/vegetable canning or freezing services industry. Seasonal employees are eligible for UI, within "season," provided all other requirements are met.

Employer: Must operate at least a portion of business as "distinctive" to the commercial fruit/vegetable canning or freezing services industry.

[Source: (Pennsylvania State Legislature, 2011)]

SOUTH CAROLINA:

Seasonality is limited to 36 weeks in a calendar year. At the time the statute takes affect (in this case Jan. 1, 2012) pending UI cases and past cases are exempt from seasonality provisions.

Employees: Seasonal employees are eligible for UI, provided all other requirements are met. Seasonal UI is based on earnings during seasonal period and at least 25 percent of base period wages must be seasonal in order to claim seasonal UI benefits. Non-seasonal UI is based on non-seasonal wages. Successors are considered seasonal unless a request to cancel the seasonal status is made within 120 days.

Employers: Account is charged when a seasonal worker makes a UI claim.

[Source: (South Carolina State Legislature, 2011)]

SOUTH DAKOTA:

Seasonality is defined as operations suspended for at least five months (maximum of seven months in operation) within a calendar year.

Specific duration of seasons has been defined for the following industries: Summer hotels, inns, camps, curio shops, roadside restaurants, ice cream/soft drink stands, stable/trail ride operations; tourist souvenir stores, tour buses, information centers, other operations in the tourist industry; drive in theatres and concessions; racetracks and racetrack concessions; baseball teams/ball park concessions; carnivals; seasonally operated country clubs/golf courses; seasonally operated chair lifts; seasonally operated ski resorts; outdoor swimming pools; seasonally operated hunting preserves/game lodges; retail nurseries classified with NAICS code 444220; retail fireworks stands.

Employees: Those considered seasonal may be eligible for benefits only during designated seasonal operating period.

Employer: Must apply to become designated as seasonal. Quarterly reports are still expected.

[Source: (South Dakota Department of Labor and Regulation, 2012)]

TEXAS:

Texas states it does not differentiate between seasonal and non-seasonal employment.

“In general, the TUCA makes no distinction between employees in general and employees who work on a seasonal basis. The fact that an employee may have only seasonal employment has no bearing on his or her ability to file a UI claim following the loss of such employment. It may have a bearing on monetary eligibility, though, if the work season is short and not much other work is done during the year”

[Source: (Texas State Legislature, 2012)]

WEST VIRGINIA:

Employee: If an employee works less than 100 days in a seasonal industry, he/she can only collect UI benefits if at least \$100 of base period wages has been earned in other employment.

Industries must be recognized as seasonal.

[Source: (West Virginia State Legislature, 2012)]

WISCONSIN:

Employee: Seasonal employees are eligible for UI, provided they have worked for 90 or more days, OR have earned at least \$500 from other employers OR their seasonal employer changes designation.

Employer: Seasonal employers must provide notice of potential ineligibility to collect UI to employees prior to the first day of work.

[Source: (Wisconsin Department of Workforce Development, 2005) (Wisconsin, 2011)]

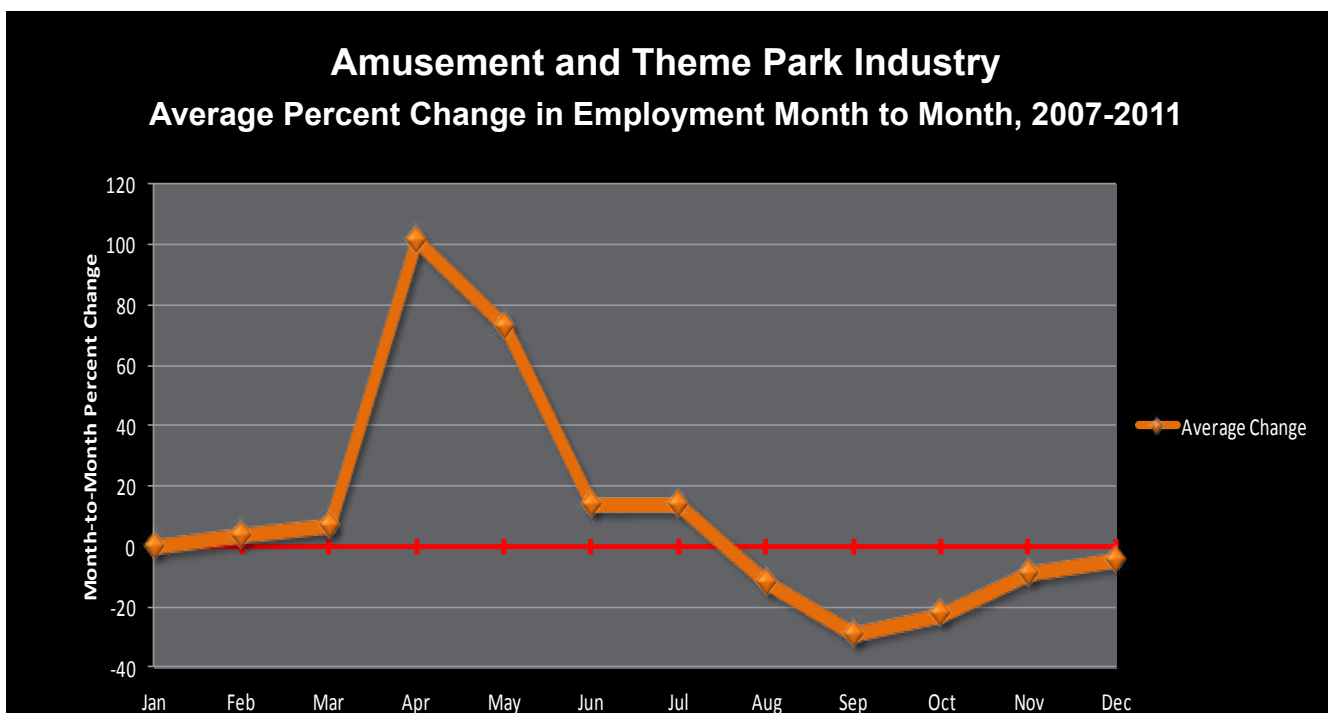
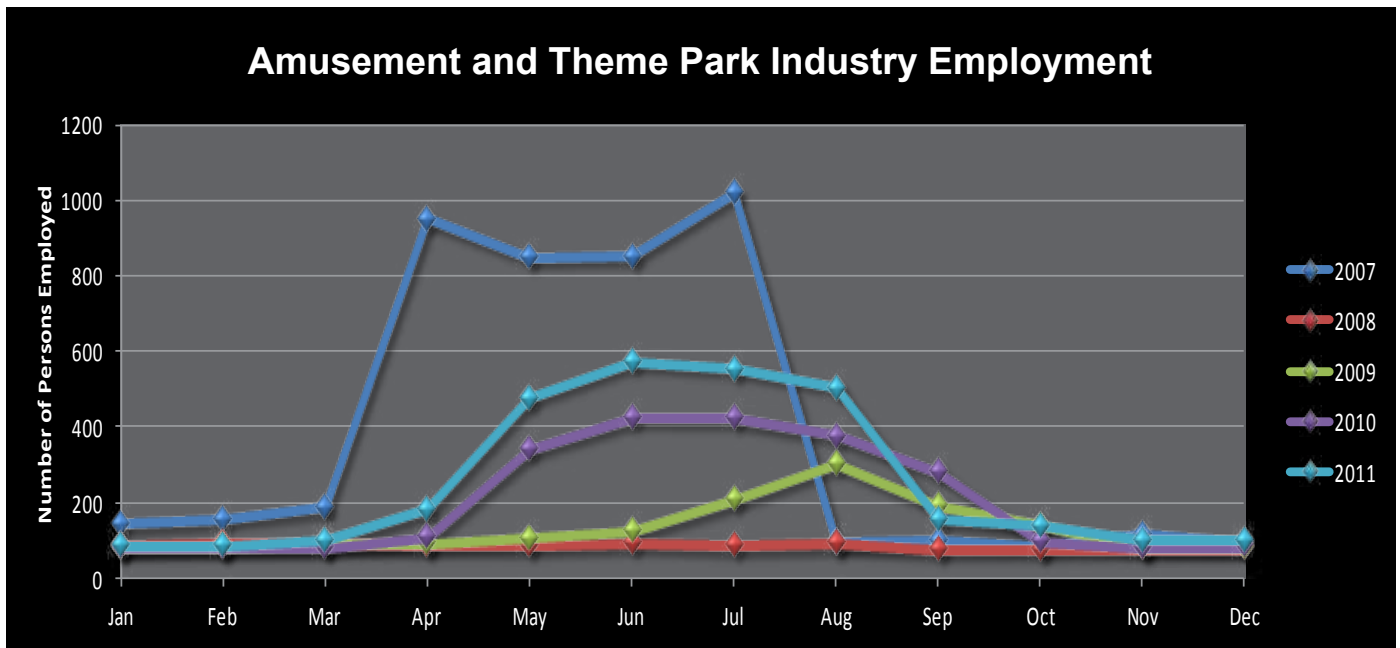
Appendix

Methodology for determining potential seasonal industries in Kansas:

Employment numbers for every industry in Kansas were evaluated for a five-year period from 2007 to 2011. Those industries with an increase or decrease in employment of 20 percent or more during the same period of the year throughout the five-year period and had at least 50 employees during the peak season were considered to be seasonal.

Industries are defined and differentiated by respective North American Industry Classification System (NAICS) Codes.

Visual example of results for Amusement and Theme Park Industry (NAICS 713110):



Sources

Arizona State Legislature. "Qualified transient lodging employment; definition." 1 January 1993. Arizona State Legislature. 14 November 2012 <<http://www.azleg.state.az.us/ars/23/00793.htm>>.

Arkansas Department of Workforce Services. "Seasonal Employer Designation." 2010. Arkansas Department of Workforce Services. 4 December 2012 <<http://www.arkansas.gov/esd/Employers/SeasonalEmployerDesignation.htm>>.

Arkansas, State of. Workforce Services Regulations as Amended with Revised Statutes Annotated: Regulation No. 9. 1 July 1989. 4 December 2012 <<http://dws.arkansas.gov/News/Regulations.htm#R9>>.

Colorado Department of Labor and Employment: Unemployment Insurance Operations. "Unemployment Insurance Handbook for Employers." 8 December 2010. Colorado Department of Labor and Employment: Unemployment Insurance Operations. 5 December 2012 <<http://www.colorado.gov/cs/Satellite?blobcol=urldata&blobheader=application%2Fpdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1251819768919&ssbinary=true>>.

Colorado, State of. "Unemployment Insurance Web Library Topic- Seasonal Work." 2012. Colorado Department of Labor and Employment: Unemployment Insurance. 5 December 2012 <<http://www.colorado.gov/cs/Satellite?c=Page&childpagename=CDLE-UnempBenefits%2FCDLELayout&cid=1251568563611&pagename=CDLEWrapper>>.

Delaware, State of. "Title 19; Chapter 33; Subchapter II." 6 December 2012. Online Delaware Code. <<http://delcode.delaware.gov/title19/c033/sc02/index.shtml#3316>>.

Indiana General Assembly. "Table of Contents." 2012. Indiana General Assembly. 6 December 2012 <<http://www.in.gov/legislative/ic/code/title22/ar4/>>.

Maine Department of Labor. "Employer's Guide to Maine Unemployment Laws." August 2009. Maine Department of Labor Unemployment Compensation. 6 December 2012 <<http://www.maine.gov/tools/whatsnew/attach.php?id=79743&an=1>>.

Maine, State of. "Title 26: Labor and Industry, Chapter 13: Unemployment Compensation, Subchapter 8: Seasonal Employment." 16 October 2012. Main Revised Statutes. 6 December 2012 <<http://www.mainelegislature.org/legis/statutes/26/title26sec1251.html>>.

Massachusetts Department of Labor and Workforce Development. "Summary of Seasonal Certification Program for Employers." 15 September 2006. Department of Labor and Workforce Development. 7 December 2012 <<http://www.mass.gov/lwd/docs/dua/business/seasonal-certprogram-summary.pdf>>.

Merriam, Ida Craven. "Seasonal Workers and Unemployment Compensation." September 1938. Social Security Administration. 11 December 2012 <www.ssa.gov/policy/docs/ssb/v1n9/v1n9p8.pdf>.

Michigan, State of. "Understanding Reasonable Assurance." June 2012. State of Michigan: Unemployment Insurance Agency: Department of Licensing and Regulatory Affairs. 5 December 2012 <http://www.michigan.gov/documents/uia/151_-_What_is_Reasonable_Assurance_for_Applying_a_Denial_Period_between_Seasons_392153_7.pdf>.

Mississippi Department of Employment Security. "Unemployment Insurance Regulations." 10 December 2010. Mississippi Department of Employment Security. 7 December 2012 <<http://www.mdes.ms.gov/Home/docs/RegulationsDecember2010.pdf>>.

Montana, State of. "2-18-101 Definitions." 2011. Montana Code Annotated 2011. 28 November 2012 <<http://data.opi.mt.gov/bills/mca/2/18/2-18-101.htm>>.

Nebraska, State of. "Nebraska Revised Statutes by Chapter: Chapter 48." Official Nebraska Government Website. 28 November 2012 <<http://uniweb.legislature.ne.gov/laws/laws-index/chap48-full.html>>.

New York Department of Labor. "Covered or Excluded Employment." Department of Labor: Unemployment Insurance. 6 December 2012 <<http://www.labor.ny.gov/ui/dande/covered1.shtm>>.

"Covered or Excluded Employment." Unemployment Insurance. 29 November 2012 <<http://www.labor.ny.gov/ui/dande/covered1.shtm>>.

New York, State of. "Title 12 New York Codes Rules and Regulations- Subchapter B Unemployment Insurance." New York Department of Labor. 29 November 2012 <<http://www.labor.state.ny.us/ui/pdfs/uiregs.pdf>>.

North Carolina General Assembly. "96-16 Seasonal Pursuits." 2 February 2012. North Carolina General Assembly. 7 December 2012 <http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter_96/GS_96-16.pdf>.

Ohio Laws and Rules. "4141.33 Seasonal Employment." 29 September 2011. LAWriter Ohio Laws and Rules. 10 December 2012 <<http://codes.ohio.gov/orc/4141.33>>.

Oklahoma, State of. "Oklahoma Employment Security Act." June 2012. Oklahoma Employment Security Commission. 28 November 2012 <http://www.ok.gov/oesc_web/documents/ACT-BOOK.pdf>.

Oregon, State of. "Chapter 657- Unemployment Insurance." 2011. State of Oregon Legislature. 29 Nov. 2012 <<http://landru.leg.state.or.us/ors/657.html>>.

Pennsylvania Department of Labor and Industry. "Section 402.5 Eligibility of Seasonal Workers in fruit and vegetable food processing." 2011. Pennsylvania Unemployment Compensation Law 2011 Edition. 10 December 2012 <http://www.portal.state.pa.us/portal/server.pt/document/438529/uc_law_pdf_%282%29?qid=53292478&rank=1>.

South Carolina State Legislature. "South Carolina Code of Laws: Annotated: Current through the end of the 2011 Session: Title 41 Labor and Employment." 2011. South Carolina Legislature. 10 December 2012 <<http://www.scstatehouse.gov/code/t41c031.php>>.

South Dakota Department of Labor and Regulation. "Unemployment Insurance Handbook for Employers." July 2012. South Dakota Department of Labor and Regulation Unemployment Insurance. 10 December 2012 <<http://dlr.sd.gov/ui/uihandbookforemployers.pdf>>.

State of Arkansas. Arkansas Code of 1987 Annotated Official Edition: 11-10-506. 1 August 2012.

State of Delaware: Department of Labor. "Your Guide to Unemployment Insurance Benefits." 9 July 2012. State of Delaware: Department of Labor. 6 December 2012 <<http://ui.delawareworks.com/documents/UI%20Claimant%20Handbook.pdf>>.

State of Indiana: Workforce Development. "Unemployment Insurance Employer Handbook." 21 June 2012. Indiana Department of Workforce Development. 6 December 2012 <http://www.in.gov/dwd/files/Employer_Handbook.pdf>.

State of Michigan Licensing and Regulatory Affairs. "Denial of Unemployment Benefits for Seasonal Workers." 12 January 2012. State of Michigan: Documents. 6 December 2012 <http://www.michigan.gov/documents/uia_SeasonalWorker_118595_7.pdf>.

State of Michigan Unemployment Insurance Agency. "Advocacy for Unemployed Workers and Employers." 25 April 2012. State of Michigan Unemployment Insurance Agency. 6 December 2012 <http://www.michigan.gov/documents/uia/Denial_Periods_for_Seasonal_Workers_2012_383584_7.pdf>.

"Denial of Unemployment Benefits to Seasonal Workers: Information for Workers." 12 January 2012. State of Michigan Documents. 6 December 2012 <http://www.michigan.gov/documents/uia/Seasonal_Worker_for_Employers_373485_7.pdf>.

State of New York Department of Labor. "Questions and Answers regarding the Functional Alignment Technical Advisory." 14 July 2012. 6 December 2012 <<http://www.labor.ny.gov/workforcenynpartners/ta/ta06-3.2att1.doc>>.

Tennessee, State of. "Tennessee Unemployment Insurance Handbook for Employees." August 2005. Tennessee Department of Labor and Workforce. 28 November 2012 <<http://www.tn.gov/labor-wfd/Employers/forms/emphand00.pdf>>.

Texas Workforce Commission. "Unemployment Insurance Law - Coverage Issues." 2012. Texas Workforce Commission. 14 November 2012 <http://www.twc.state.tx.us/news/eft/ue/ui_law_coverage_issues.html>.

West Virginia State Legislature. "West Virginia Code." 2012. West Virginia Legislature. 14 November 2012 <<http://www.legis.state.wv.us/wvcode/ChapterEntire.cfm?chap=21a&art=6§ion=1A>>.

Washington, State of. "Seasonality Provisions in Unemployment Compensation Laws." 20 October 2005. State of Washington Legislation. 5 December 2012 <<http://www.leg.wa.gov/JointCommittees/UITF/Documents/10-20seasonality.pdf>>.

Wisconsin Department of Workforce Development. "Seasonal Employment Notice." November 2005. Wisconsin Department of Workforce Development. 10 December 2012 <<http://dwd.wisconsin.gov/dwd/publications/ui/ucb9381.pdf>>.

Wisconsin, State of. "Chapter 108: Unemployment Insurance and Reserves." 2011. Wisconsin Legislative Documents. 10 December 2012 <<http://docs.legis.wisconsin.gov/statutes/statutes/108/02/>>.

Recommended Reading

The following documents are brief readings suggested to be beneficial in the consideration of seasonal employment statutes.

	Page
Understanding Reasonable Assurance, State of Michigan. 2012	17
Seasonal Workers and Unemployment Compensation, Ida Craven Merriam. 1938	18
Seasonality Provisions in Unemployment Compensation Laws, State of Washington. 2005	26

Understanding Reasonable Assurance

State of Michigan
Department of Licensing
& Regulatory Affairs

Unemployment Insurance Agency

Rick Snyder, Governor
State of Michigan

STEVEN H. HILFINGER,
Director Department of
Licensing & Regulatory Affairs

STEVE ARWOOD, Deputy
Director Department of
Licensing & Regulatory Affairs
and

Director,
Unemployment Insurance
Agency

Understanding Denial Periods

A “Denial Period” prevents a worker from receiving unemployment benefits based on work with an employer who hired that worker to work during a regularly recurring seasonal period (or school year), if the employer has given the worker “reasonable assurance” of returning to the work at the start of the next season (or school year). For more details, please review Fact Sheet UIA 150, which is located on the UIA website at www.michigan.gov/uia.

Defining Reasonable Assurance

Although “Reasonable Assurance” is not a guarantee of a job, it is an employer’s “reasonable” assertion that a job will be available at the beginning of the next season, based upon the facts and circumstances known to the employer at the time the assurance is given.

Reasonable Assurance Given in Good Faith by the Employer

“Reasonable Assurance” must be given by the employer in “good faith” taking into account economic circumstances at the time the assurance was given, and economic circumstances that could reasonably, at the time the assurance was given, be foreseen to exist at the time for which the assurance was given (that is, what economic circumstances would likely exist at the beginning of the new season or school year). For example, in the case of a school district, if the declining enrollment and state funding will likely mean that the 25 least senior employees in a job category will not be rehired, and the claimant involved is included in that group, then an assurance of re-employment given to that employee would not be in “good faith” and therefore would not be reasonable.

Comparing Wages and Fringe Benefits of Jobs

The economic terms and conditions of the employment in the successive seasonal period or academic year must be reasonably similar to those in the previous seasonal period or school year. An assurance of a job paying wages or providing fringe benefits of less than 80% of the worker’s previous job would not be considered “reasonable assurance” for the purpose of applying the denial period.

For example, if a full-time, permanent “contract” teacher is given “reasonable assurance” of work for the following academic year as a regular emergency substitute (RES) teacher, the differences in pay and benefits must be considered to determine if the claimant had been given “reasonable assurance” when he/she was assured of the RES work. The RES work pays about 58% of the pay the claimants received as “contract” teachers, and did not offer sick leave, leaves of absence, or holiday pay. In addition, an RES is entitled to either dental or medical insurance coverage, but not both; whereas a contract teacher is entitled to both.

For further information about Denial Periods and Reasonable Assurance, call UIA’s **Office of Employer Ombudsman (OEO)**, 1-855-484-2636 (4-UIAOEO) or 313-456-2300, or email OEO@michigan.gov.

Fact Sheet #151
June 2012



Michigan Department of Licensing & Regulatory Affairs
Unemployment Insurance Agency
Authority: UIA Director: Quantity: 1,000
Cost: \$14 (1.4c/copy). Paid for with federal funds.

LARA is an equal opportunity employer program. Auxiliary aids, services and other reasonable accommodations are available upon request to individuals with disabilities.

SEASONAL WORKERS AND UNEMPLOYMENT COMPENSATION

IDA CRAVEN MERRIAM*

In about half the unemployment compensation laws now in effect in this country there are provisions limiting the benefit rights of seasonal workers or requiring the administrative agency to study the problem of benefit payments to workers in seasonal industries or occupations. The terms of most of these provisions are vague, permitting – in many cases necessitating – considerable administrative discretion in putting them into effect. The rational formulation and evaluation of specific policies must be based on guiding conception of the character and purpose of an unemployment insurance system and of the reasons for varying the benefit rights of workers in seasonal and in nonseasonal employment.

There is hardly an industry in the United States which does not exhibit some seasonal variation in employment. The magnitude and the pattern of variation differ greatly, however, from industry to industry. If one excludes from consideration the industries with very minor employment fluctuations, the “seasonal industries” may be divided roughly into two groups. At the one extreme are industries which virtually cease production certain periods of the year – canning or logging in some areas; this first group will be designated as the short-season industries. The second type of seasonal industry is that which operates throughout the year but with definite peak and slack seasons – for example, the garment industry. There are marked differences among industries in the first group as to the length of the seasonal period, and among industries in the second group as to the amplitude and pattern of the fluctuations from peak to slack employment. Nevertheless, the distinction between the two types of seasonal industry is significant and important for unemployment compensation. Whether or not industries of the second type are seasonal

according to the definitions now embodied in most of the State unemployment compensation laws is somewhat doubtful. The issue will have to be determined by each State.

Seasonality of production may affect the individual worker in a variety of ways. It may mean for him variations in daily or weekly hours of work, and consequently in his earnings, without, however, any change in his employment status. Some workers may themselves have steady jobs although employed in seasonal industries or by filing in periods of irregular employment in a nonseasonal industry with employment in a seasonal industry. Some workers may wish year-round employment but fail to obtain it and find themselves employed only for limited periods of time. To some individuals, seasonal employment for short periods represents a welcome opportunity for supplementation of the family income, but year-round employment is neither sought nor desired. A few workers with high wage rates may earn in seasonal employment an annual income adequate to their needs and may, therefore, not wish other work during the off season.

From the point of view of unemployment insurance, workers in seasonal industries fall into two theoretically distinct groups: those who are in the labor market during part of the year only and during the other part of the year are not actively seeking work; and, second, those who are constantly attached to the labor market. It may be difficult to tell in which group an individual worker belongs, since failure to seek work may be due to past experience of the impossibility of finding work at certain seasons of the year. In practice, the test of inclusion in one or the other group will probably have to be the worker’s previous employment record, but the distinction remains important as a guide to policy.

All existing unemployment insurance systems exclude some workers in seasonal industries from

*Bureau of Research and Statistics, Division of Unemployment Compensation Research.

benefits by the general coverage and eligibility provisions. In this country, the general exclusion of agricultural labor eliminates from compensation a large amount of seasonal unemployment. The limitation of coverage to employers who operate 20 weeks or more a year excludes many seasonal activities. Resort hotels in a number of States are finding it possible to avoid coverage by shortening their usual season a single week. Sometimes no change in the customary practice is necessary. The general eligibility requirements of the unemployment compensation laws further exclude from benefits a considerable number of seasonal and irregularly employed workers who accumulate too few weeks of employment ever to qualify for benefits, although the industry in which they are employed may be covered. In addition, a few States exclude from coverage specific occupations which might be regarded as seasonal in nature.

The eligibility provisions of existing unemployment compensation laws, and to a slight extent the coverage provisions, also reflect an intention to exclude from the system the most casual and irregularly employed workers. This exclusion is justified on the ground that the system is not intended and cannot afford to give protection to all unemployed workers. Only the worker who has an expectation of at least a specified minimum of employment in a year is eligible for insurance protection. If total benefits are proportioned to previous earnings, as in most of the State laws, the irregularly employed workers would in any case qualify for such negligible amounts as hardly to justify the administrative expense of payment. With respect to eligibility provisions, the irregularly employed workers in seasonal industries are in the same position as irregularly employed workers in nonseasonal industries.

A number of arguments are advanced for further and specific limitation of the benefit rights of workers in seasonal industries. It is said that: (1) Seasonal unemployment is predictable, and seasonal workers face not the probability but the certainty of some unemployment year after year; therefore, seasonal unemployment is not properly within the scope of a social insurance system. (2) Seasonal workers are already compensated for their periods of unemployment by high hourly wage rates. (3) The drain of benefit payments to seasonal workers will bankrupt State unemployment

compensation funds, rendering them insolvent in times of recession and thus depriving steady workers of the benefits due them. (4) Benefit payments to seasonal workers will subsidize seasonal industries and encourage seasonality of operation.

The validity and the practical significance of these arguments should be examined.

Is Seasonal Unemployment Predictable?

Seasonal unemployment can be analyzed from two points of view, that of the industry and that of the individual worker. If the industry alone is considered, it is certain that seasonal unemployment will occur, year after year, in industries of the type which have here been designated as short-season industries. Shortages or surpluses of crops or of orders for the product will cause variations in the number of workers seasonally employed, and thus in the number seasonally unemployed. There will also be variations from year to year in the timing of the season. In some short-season industries one will find a minority of employers who have succeeded in stabilizing employment throughout the year. But on the whole, it can safely be predicted that in such industries production will be carried on only during certain periods of the year.

In the case of industries of the second type, those with year-round production but with busy and slack seasons, the situation is quite different. In the women's garment industry, for instance, production is usually concentrated in the spring and the fall of the year. But the level of production at any particular period of the year and the degree of concentration of production in certain months depend more definitely on general economic conditions and on the existence or lack of orders than on seasonal factors. Moreover, the variation from firm to firm in the timing magnitude of the peak of production is so great to make employment in the industry appear irregular rather than seasonal in character if attention is centered on actual employment rather than on statistical averages.

It is significant that for industries other than the short-season industries, a "typical" and regularly recurrent seasonal pattern can be found only where related industries are grouped into major industrial categories. If the grouping is sufficiently broad, irregularities in the employment pattern

of the component industries are canceled, and a general pattern of seasonal variation appears. In the entire economy, productive activity tends to be concentrated in the spring and the fall of the year, with a slight dropping off in activity in midsummer and a sharper decline in midwinter. This movement and gross seasonal movements for major industrial groups are regularly recurring. But for smaller industry groups and for individual firms in industries of the second type as here defined, while fluctuations in employment in a particular year may be marked, seasonal patterns of unemployment are not so regular; in many cases there are marked changes in the pattern from one year to another. The probable limits of the amplitude and timing of seasonal unemployment in such industries can be determined only in broad terms and subject to a high degree of error.

From the point of view of the individual worker in such industries, seasonal unemployment is even less certain than it is from the point of view of the industry. The millinery worker knows that there is likely to be a lay-off after Easter; he also knows that if an order happens to come in at the right time, the lay-off will be short and may affect few workers. If he is an unusually capable worker, he may feel relatively sure that his period of unemployment, if it occurs at all, will be brief; if he is a marginal, poor worker, he may expect to be unemployed a long time. The great mass of workers will not know whether they will be unemployed for long or short periods, or at all, during the slack season in any particular year. In other words, the *incidence* of seasonal unemployment in industries of this type is unpredictable, and such unemployment may be considered a hazard within the scope of the social insurance program.

For the worker in a short-season industry the situation is a little different. Where a plant maintains a few employees throughout the year, any worker may aspire to be employed the year round; but the great bulk of workers know when they are hired that their employment is of limited duration. For these workers, unemployment during the off season is inevitable *unless* they can find jobs in some other industry. In the latter event, the worker is in effect a year-round worker, part of whose employment is in a seasonal industry. He is attached to the labor market throughout the

year and unemployment will come to him, also, unexpectedly and at unpredictable times.

Workers in seasonal industries who do not wish other paid employment during the off season are in a different position. They may be considered an auxiliary part of the labor force; and it would be entirely equitable and consistent with the fundamental purpose of unemployment compensation to exclude them from receipt of benefits during the periods when they are not actively seeking work. Most of the State unemployment compensation laws which provide special treatment of seasonal workers in effect recognize this distinction by defining such workers as those ordinarily employed in seasonal industries who do not customarily (or ordinarily) have other work (or other employment) in the off season.

Do Seasonal Workers Receive Relatively High Wages?

It is commonly assumed that workers in certain seasonally affected industries, primarily the construction industry, receive sufficiently high hourly rates to compensate them for loss of employment at certain periods of the year. The fact of high hourly wage rates is easy enough to verify. Unfortunately, too little is known about actual annual earnings in specific industries to make possible any informed judgement as to the adequacy of these earnings on an annual basis or as to their comparability with the returns from employment in other industries. And even the hourly wage rules of workers in many seasonal industries are low.

State unemployment compensation laws in this country, by setting a maximum weekly benefit amount and a maximum amount of earnings that will be credited to each worker per quarter, now place a definite limit on the benefit rights of the higher-paid workers. Specific limitations for high-paid seasonal workers would introduce a different purpose into the system and would, moreover, lead to serious administrative difficulties. In the first place, it would be necessary to distinguish the seasonal workers with "adequate" annual incomes from those with "inadequate" annual incomes. The former may be relatively so few in numbers as not to justify special attention. Secondly, even the high-paid seasonal worker suffers from cyclical,

technological, and irregular unemployment, for which he should be compensated.

Will Payment of Benefits to Seasonal Workers Bankrupt State Funds?

An exact answer to this question would involve, first, a method of estimating the amount of compensable unemployment attributable to specific industries in particular States. No satisfactory method of making such an estimate has been devised. Not only is statistical information lacking, but the very concept of the unemployment hazard in individual industries involves serious ambiguities. If a worker who has been employed in a brick factory for 9 months loses his job, immediately finds employment in a garage, and then is laid off 3 weeks later, is his unemployment to be attributed to the brick industry or to the automobile repair service industry? This logical difficulty arises wherever interindustry mobility is economic life in this country.

Until a State has had some experience with benefit payments, the only data available for analysis of seasonal unemployment will be figures showing the number of workers employed in particular industries in some week of each month or, in rare instances, in each week of the year. Such data do not indicate the amount of unemployment, and certainly not the amount of compensable unemployment, attributable to the industry, since they contain no clue as to the duration of weeks of employment and weeks of partial total unemployment for individual workers. They do not even indicate the total number of workers attached to the industry, since there is no way of determining how many workers have moved in and out of the industry over the period of a month or a year. If 5,500 workers were employed on July 15 and 5,000 on August 15, it is entirely possible that between the two dates 2,500 were fired and another 2,000 hired. In the second place, employment figured for a particular industry give no indication of the number of workers who find employment in other industries and occupations.

Whatever the difficulties of defining the unemployment hazard of the particular industries, once benefit payments begin it is possible to measure the relative drain on the fund caused by benefit payments to workers whose claims result from separation from particular industries.

Only after several years, however, will it be possible to estimate what proportion of the benefit payments to workers separated from seasonal industries represents payments for strictly seasonal unemployment. The experience of Wisconsin* up to the present indicates no excessive drain from seasonal industries.

Were benefits paid to all eligible workers for a fixed number of weeks, and for as many as 26 weeks a year, there might be a reason to fear the effect on the fund of payments to seasonal workers. But with the duration and amount of benefits directly related to past earnings, the possible drain on the fund is much less. Whether this strict limitation of benefits in relation to past earnings is socially desirable may be debated. But as matters stand, State unemployment compensation systems contain an automatic check on benefit payments. It should be noted, moreover, that some seasonal industries may be expected to pay into the fund more than is drawn out in benefits, since contributions are based on total pay rolls, while the great majority of the workers in the industry may prove ineligible for benefits. This is particularly likely to be the case in industries which rely primarily on migratory laborers who work too short a time in any one State to acquire rights to benefits under any State law.

The limitation on benefits that results from existing eligibility and duration provisions is more effective in the case of workers in industries with slack and busy seasons. Considerable amounts may be paid as unemployment compensation to workers who are laid off in industries of the second type; the important question is, What will be the *relative* drain on the funds from such payments?

One cannot rightly evaluate the danger to State unemployment compensation funds of benefit payments resulting from seasonal unemployment without comparing the probably size of such payments with those properly attributable to nonseasonal unemployment. As has been pointed out above, not all unemployment in either type of seasonal industries is seasonal unemployment. Even during the active season, there is, in many

*The Wisconsin unemployment compensation law provides that partial benefits shall not be paid to workers in fruit and vegetable canning during the active season; otherwise there are no special restrictions on the benefit rights of workers to seasonal industries. Employment in logging operations is not covered by the Wisconsin law.

short-season industries, a considerable volume of partial unemployment, which would be compensable under the laws of many States. In industries of the second type, a considerable number of workers are partially unemployed in the busy season as well as in the slack season. A considerable amount of the unemployment in industries of this type can be regarded only as irregular in character, while in both types of seasonal industries recession or depression brings further unemployment. In the first place, therefore, the possible savings to the fund from specific limitation of benefits for strictly seasonal unemployment will not be so great as might appear from an examination of the volume of unemployment in seasonal industries. In the second place, many industries which cannot be regarded as seasonal under any reasonable definition will, because of labor turn-over and irregularity of employment, be responsible for much unemployment, in prosperous years as well as in depression periods.

It would seem, on the basis of present knowledge, that the only States which need fear a serious drain on their funds from payments to seasonal workers are those in which a large proportion of all the industries of the State are seasonal in character, with sufficiently long periods of operation to qualify many workers for benefits and with such a timing of the periods of seasonal activity that there is little opportunity for dovetailing employment. The problem will be most acute in States with limited industrial populations. In such States the present contribution rate may not be adequate to cover the normal risks of unemployment within the State. If immediate limitation of benefits is necessary, this situation would seem to call for the development of some alternative policy for the future.

Will Benefits to Seasonal Workers Subsidize Seasonal Industries?

The individual employer-reserve system and the merit-rating device represent attempts to shift some of the responsibility of compensation for unemployment to particular industries. Whether the objective of increased stabilization will be achieved by these devices is still an open question. However, it cannot be too strongly emphasized that, under systems which

incorporate these principles limitation of benefits for seasonal workers runs counter to the logic of allocating responsibility to specific employers. If contributions are reduced for employers whose accounts are charged with relatively few benefit payments, any specific *limitation* of benefits to seasonal workers represents a measurable subsidy to employers in *seasonal* industries. In excluding from coverage employers who operate at a given level less than a specified number of weeks in the year, the Social Security Act, and nearly all State laws, in effect recognize that some employers carry on activities of such limited duration that they should not be brought under the system at the present time. Beyond that it is not reasonable to go, so long as the merit-rating provisions stand.

If merit rating is effective at all, it should operate most forcefully in those industries where fluctuations in employment are to some extent under the control of the employer. Since neither cyclical nor secular declines in employment are ordinarily subject to control by individual employers, merit rating would seem likely to be most effective in seasonal and irregular industries. The number of occupations in which seasonal employment is inevitable is much smaller than is ordinarily realized, and the outstanding examples of successful stabilization are all on the part of employers in seasonal industries. Limitation of benefits for workers in seasonal industries may well result in destabilization of employment if merit-rating provisions are in effect. Employers who ordinarily maintain a stable labor force, at some trouble and expense to themselves, may have an incentive to allow employment as well as production to fluctuate, in order that they may receive a seasonal classification. Moreover, there will be an incentive for employers in industries which have been determined seasonal to concentrate insofar as possible all unemployment in the off season, thus in many cases forcing greater seasonality of operations in related industries.

The majority of the State laws which provide for the limitation of benefit payments to the native season specify that this period shall be the longest period during which "according to the best practice of the industry" it is customary to operate. It has been argued that the intention was to enable the most stable employers in a seasonal industry to

qualify for reductions in their contribution rates as easily as employers in nonseasonal industries, while providing an incentive to less stable employers to lengthen their periods of operation. This argument has some merit in the case of a very few short-season industries where periodic shut-downs are really inevitable. But in most seasonal industries, the “best” practice of the industry is year-round operation. And if it be assumed that what is meant by the phrase “best practice” is the practice of the majority of employers, the effect will be to sanction existing irregularity of operation and to discourage future improvement.

Under a pooled-fund system of unemployment insurance the payment of benefits to seasonal workers could be regarded as a subsidy to the industries in which they were employed only if knowledge that the workers were receiving benefits led the employers to reduce wage rates. The possibility of such a reduction would depend upon the relative bargaining power of workers and employers in particular industries and perhaps upon the application of minimum-wage legislation. Moreover, only in the short-season industries would the relation between employment in the industry and compensable unemployment be sufficiently direct to suggest a general reduction in wage rates. Where the incidence of unemployment is unpredictable, as in industries with busy and slack seasons, it would be impossible to make reductions applying only to those workers who will later receive compensation. Knowledge that workers can draw benefits may lead some employers to dismiss workers whom they would otherwise have tried to carry on their pay rolls. Such action would cause a slight destabilization of employment, but this result would occur as frequently in nonseasonal as in seasonal industries.

Administrative Problems

Any specific limitation of the benefit rights of seasonal workers not only raises fundamental questions of policy but may lead to serious administrative complications.

Several methods of limiting the payments to seasonal workers have been proposed. Eleven of the State laws call for payment of benefits only during the defined period of seasonal operations; in other words, benefits are not payable in the off season. The remaining State laws call either

for an equitable adjustment of benefit rights or for limitations proportionate to the contributions received from the seasonal industry. The chief types of adjustment thus far suggested are:

1. Lengthening the waiting period for workers in seasonal industries;
2. Reducing the proportion of earnings of seasonal workers credited for benefit-payment purposes; and
3. Segregating the wage credits (against which benefits may be charged) earned in seasonal and nonseasonal employment, with the former available for use only during the defined seasonal period and the latter at any time during the year.

The limitation of benefit payments to the defined seasonal period or the segregation of wage credits earned in seasonal and nonseasonal employment would make it necessary for the administrative agency to determine in advance the seasonal period for each seasonal industry and perhaps for special occupational groups within each seasonal industry. Even in the short-season industries the timing of the season varies greatly from year to year because of weather conditions, changes in consumer demand, or the effect of the business cycle. Practices vary greatly from employer to employer. To disentangle these conditions and determine what is the normal season, or even the longest season permitted by the best practice in the industry, will require objectivity and wisdom, as well as adequate data. In the case of industries with year-round employment, but with busy and slack seasons, the difficulty of determining a seasonal period of operation is far greater, if not insuperable. Moreover, in such industries, the saving to the fund from limitation of benefits to definite periods of the year might not be significant.

The device of limiting benefit payments to a defined season is applicable, if at all, only to the short-season industries. Even in these industries, a difference of a week or two in the timing of the seasonal period may wipe out most of the possible saving to the fund by allowing many workers to draw most of the benefits to which their accumulated wage credits would entitle them. Moreover, the specification of a definite seasonal period may lead to real injustice as between workers, since for each worker chance in the timing of his lay-off and in the timing of operations

in the particular firm by which he is employed will determine his benefit rights. If an attempt should be made to define an off season during which benefits were not payable in industries of the second type – those with busy and slack seasons – the inequities might be much greater.

A further disadvantage in limiting benefit payments to definite periods of the year is the fact that the seasonal worker, if he receives benefits at all, will receive them at widely separated time intervals. This will cause confusion, if not hardship, to the worker and administrative difficulty to the unemployment compensation agency.

Seventeen of the State laws define a seasonal worker as one who does not ordinarily have other work (or employment) in the off season. How difficult it will be to administer this provision depends partly on the decision made by the State as to the meaning of other work, and the tests established for employment during the off season. If employment in covered industry only is counted, the individual wage record will give some information, though it will not prove whether the worker “ordinarily” or regularly has other employment. Several of the laws specify that noncovered employment also shall be considered. If a State interprets the provision to mean “substantial” employment in the off season, the necessity for exercise of judgment will arise in each case. Disputed claims are likely to be numerous, no matter what test is applied.

The segregation of wage credits earned in seasonal and in nonseasonal industries would avoid this difficulty of distinguishing between workers, since an individual who had had employment in a covered industry during the off season would automatically be permitted to draw benefits on the basis of the wage credits thus earned. This device, however, would not take account of employment in noncovered industries. So long as there are size-of-firm limitations on coverage, the device may, therefore, be very unfair. Nor would it allow for consideration of the individual’s customary employment experience. It would lead to frequent interruptions in the payment of benefits to workers who at any time obtained employment in seasonal industries. From an administrative point of view, this method would necessitate setting up dual wage records and would introduce considerable

complexities into the benefit procedures.

The other two suggested methods of limiting benefit rights – lengthening the waiting period and decreasing the proportion of earnings credited – might be put into effect without administrative determination of a fixed seasonal period. The proportionate reduction in credits or increase in waiting period for specific industries would, however, have to be determined on the basis of some measure of the “seasonality” of the industry. The difficulties of arriving at an equitable test of seasonality have already been discussed. In addition, it would be necessary to set up criteria for distinguishing the seasonal workers from the nonseasonal workers in seasonal industries. One advantage of these two methods is that they both would make it possible for the fund or the employer to carry part of the burden of seasonal unemployment, since wage credits could be reduced, or the waiting period increased, less than would be indicated by the measure of seasonality. These methods are better adapted to limitation of benefits for workers in industries of the second type, those with busy and slack seasons, than is any method based on the determination of a seasonal period. Whether benefits for workers in these industries should be limited by specific regulation is, however, highly questionable. And in practice, the specific decisions made on the basis of these methods would probably prove difficult to justify either to the workers concerned or to the general public.

It should be recognized that any special regulations applying to particular groups of workers are certain to necessitate special types of reporting by employers and special methods of recording and benefit computation by the agency. Such regulations will, therefore, increase administrative expenses, and this increase should be taken into consideration in any estimate of the probable savings from limitation of benefits.

Conclusion

In the foregoing discussion it has been suggested that there are no conclusive a priori reasons for limiting the benefit rights of any but a very small group of workers in “seasonal” industries under a system designed to pay benefits on an insurance basis during limited periods of

unemployment, to workers who are currently attached to the labor market. It has been pointed out that available information is inadequate to indicate what drain on the unemployment compensation funds of particular States will result from benefit payments for seasonal unemployment. The danger of depletion of funds because of payments of benefits to seasonal workers would seem to be serious in only a few States, primarily those with limited coverage and few industries. It is probable that States with diversified industries can justifiably wait until after a year or two of experience with benefit payments before applying special seasonal regulations. If special regulations prove necessary, the resultant administrative adjustments can better be made when the regular benefit-payment machinery is functioning smoothly than in the first months of benefit operations.

It is important, however, that steps be taken now to assure the accumulation of relevant data on which future policy decisions may be based. Studies now in progress in a number of State unemployment compensation research divisions will add greatly to present knowledge of seasonal employment. But the chief source of new information will be the experience of the benefit-paying States.

If experience should demonstrate that seasonal unemployment is a serious problem for unemployment compensation, analysis of that experience should also point the way to possible methods of handling the problem. In some States a large number of workers in short-season industries, who also have some employment in the off season, may qualify for benefits of such small amounts as hardly to justify the administrative cost of payment. This difficulty might be met either by more stringent eligibility requirements – which would exclude such workers entirely – or by a change in the ratio of benefits to earnings for lower-paid workers, so that everyone who qualified at all would be eligible for a given minimum number of weeks of benefit. If it is found that the chief problem is the threatened insolvency of unemployment compensation funds in a few States where there is a marked concentration of seasonal industries, a national reinsurance system would effect a partial pooling of risks for the

entire country might be the solution. If further study and experience indicate that in some States considerable sums are paid year after year to workers in a few short-season industries operating for 6 or 8 months, and if it appears that the workers in these industries are not really looking for other work during the off season, limitation of benefits to the seasonal period may be decided upon.

It is possible, although it does not now seem probable, that payments of benefits to workers on account of seasonal unemployment will result in a measurable excessive drain on unemployment compensation funds in many States. In such case, the adjustment within the insurance system might take the form either of restricted benefit rights or the use of additional sources of funds, such as employee contributions or Government subsidy. This situation might arise here, as it did in England, if benefits of almost unlimited duration were substituted for provisions of the present State laws relating benefits to previous earnings (or employment). In the absence of such a change, however, a heavy drain on the unemployment compensation funds in many States seems more likely to result from general disorganization of the labor market than from strictly seasonal unemployment. While stabilization of employment is important to the smooth functioning of unemployment insurance, the major policies directed specifically toward this end must probably be developed outside the insurance system itself, although the long-run effect of unemployment compensation in helping to stabilize economic activity through the maintenance of workers' purchasing power should be taken into account.

SEASONALITY PROVISIONS IN UNEMPLOYMENT COMPENSATION LAWS

OVERVIEW

No Seasonality Provisions (Federal Law and 32 State Laws)

Alabama	Illinois	Montana	Oklahoma	Vermont
Alaska	Iowa	Nebraska	Oregon*	Virginia*
California*	Kansas	Nevada	Rhode Island*	Washington
Florida*	Kentucky	New Hampshire	South Carolina	Wyoming*
Georgia*	Louisiana	New Jersey*	Tennessee	
Hawaii	Maryland	New York*	Texas	
Idaho*	Missouri	North Dakota	Utah	

Seasonality Provisions (18 State Laws)

Arizona	Delaware	Michigan*	North Carolina*	West Virginia
Arkansas	Indiana	Minnesota*	Ohio*	Wisconsin*
Colorado*	Maine*	Mississippi	Pennsylvania	
Connecticut*	Massachusetts*	New Mexico*	South Dakota	

DESCRIPTIONS OF SELECTED STATE LAWS

Colorado - Employers in particular industries that are active less than 26 weeks per year may apply for certification as seasonal employers. If certified, employers must notify workers of their status. Approximately 600 businesses are certified as seasonal, including ski resorts, golf courses, and lawn services.

Connecticut - Benefits paid to workers in the construction industry are calculated based on wages earned in the single high quarter. (Benefits paid to other workers are calculated based on wages earned in the two high quarters.) Also, state law specifies that, in determining whether or not an individual is available for work, the individual's pattern of unemployment may not be considered. (Not technically a "seasonality" provision.)

Maine - Employers in particular industries that are active less than 26 weeks per year may be designated as seasonal employers by the state. These industries include tourism, packing and processing, camps, sports, rafting, and wreath making. Wages earned in the season can be used only to qualify for unemployment benefits in the season. (There is no direct change in tax liability, except that no benefits are paid, and therefore, no benefits are charged.) Benefits are calculated twice – once using only seasonal wages for "in-season" unemployment, and a second time using other wages for "out-of-season" unemployment.

Massachusetts - Employers in particular industries that are active less than 16 weeks per year may be certified as seasonal employers. Employers typically certified as seasonal are cities and towns, for employees such as camp counselors and lifeguards.

* An asterisk indicates that the information source is an interview of the state's unemployment insurance program administrator by legislative staff. Otherwise, the information source is "Highlights of State Unemployment Compensation Laws" prepared by Strategic Services on Unemployment & Workers' Compensation (UWC).

Michigan - Certain employers may be certified as seasonal employers. More than half of their employees must work less than 26 weeks per year. All other employers in the industry must be similarly limited. If a seasonal employer provides reasonable assurance that the employee will be able to return to employment the following season, the employee is not eligible to receive benefits after the season ends. Seasonal employers typically include apple orchards and golf courses, but not tourism-related businesses. By law, employers in the construction industry may not be certified as seasonal.

Minnesota - Employers in particular industries that are active less than 15 weeks per year may be certified as seasonal employers. Wages earned in the season can be used only to qualify for unemployment benefits in the season. (There is no direct change in tax liability, except that no benefits are paid, and therefore, no benefits are charged.) Benefits are calculated twice - once using only seasonal wages for "in-season" unemployment, and a second time using other wages for "out-of-season" unemployment. Seasonal employers typically include recreation-related such as ski hills and the state fair. Typically affects only about 150 workers per year.

New Mexico - Only employers in the ski industry only are considered to be seasonal employers.

North Carolina - Employers may be certified as seasonal employers within one or more seasons. Employer wage reports must designate wages as seasonal or non-seasonal. When a claimant's wage history shows that 25 percent or more of his or her wages are seasonal wages, the claimant's claim will be treated as a seasonal claim. Benefits paid in the season are reduced, but not at other times. Seasonal employers typically include agricultural employers, resorts, and other recreational facilities.

Ohio - Employers may be certified as seasonal employers. Their operations must take place substantially within a season that is 40 weeks or less or be limited by climatic conditions. Seasonal employers typically include amusement and water parks, baseball teams, cities, landscapers, and pumpkin farms, but not construction employers. A seasonal worker has only one employer during his or her base period and must be laid off and seeking benefits during the season. The seasonal worker may receive benefits for a maximum of 20 weeks and only during the season. In 2004, there were 155 seasonal employers and 20 affected workers.

Wisconsin - Certain employers may elect to be considered "seasonal employers" so long as more than 75 percent of wages are paid within two quarters. Benefits paid to their workers are not charged. Taxes paid by these employers are increased by 2 percent. About 20 employers have elected to be considered "seasonal employers."

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Washington, State of. "Seasonality Provisions in Unemployment Compensation Laws." 20 October 2005.
State of Washington Legislation. 5 December 2012 <<http://www.leg.wa.gov/JointCommittees/UITF/Documents/10-20seasonality.pdf>>.