

Extending Unemployment Insurance Benefits to Workers in Precarious and Nonstandard Arrangements

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Introduction

Many fear that rapid technical change is raising the rate at which workers are displaced from their jobs, as machines take over many tasks once performed by humans (Brynjolfsson and McAfee, 2014). By shifting the locus of production of many goods from advanced economies to emerging and developing ones, globalization also has contributed to worker displacement (see, e.g., Autor, Dorn and Hanson, 2013; Acemoglu et al., 2016; Pierce and Schott, 2016). Even aside from changes driven by technology and trade, employers’ increasing reliance on contract workers and on-demand scheduling rather than on permanent employees who work predictable schedules has added to the precariousness of many workers’ jobs (Weil, 2014; Lambert, Fugiel, and J.R. Henly, 2014; Lambert, Henly, and Kim, 2019).

The current global pandemic threatens to magnify these forces. The adoption of new technologies that minimize workers’ exposure to the virus may accelerate the process of labor-displacing technological change. The widespread shift to remote work during the pandemic may lead to lasting changes as well. Although remote work has some drawbacks, it allows workers to avoid time-consuming and costly

commutes, and businesses can realize substantial savings on office space and business travel, among other benefits. Even after the pandemic is over, some of the shift to remote work seems likely to persist, contributing to reductions in employment in industries such as hotels, restaurants, and building maintenance—industries that largely serve other businesses and in which employment is dominated by low-wage workers (Autor and Reynolds, 2020). New jobs will be created, but many likely will be in different locations and require different skills from those that have disappeared. Further, as employers confront a less settled economic environment, the shift toward more precarious employment arrangements may accelerate, adding to workers’ uncertainties.

These developments underscore the importance of a robust social safety net for those who lose their jobs. They also point to a greater need for workforce program services that help workers find and possibly retrain for other jobs. Unemployment insurance (UI) is the principal mechanism for assisting job losers in the United States.

However, serious weaknesses in the unemployment insurance system have developed, particularly in recent years. In many states, the average share of lost wages replaced by unemployment insurance benefits and the maximum length of time the unemployed can receive benefits have both fallen. Some states have made the process of applying for benefits more difficult. Moreover, large numbers of workers do not qualify for UI benefits at all. Following the Great Recession of 2008–2009, the UI reciprocity rate—the share of the unemployed receiving unemployment benefits—fell to historic lows. The current pandemic, which triggered the deepest recession since the Great Depression of the 1930s, has shined a bright light on the UI system’s inadequacies and the need for reform.

Comparing the U.S. UI system with those of other advanced economies also reveals its inadequacies. Many other developed countries provide both unemployment benefits that are based on a worker’s prior earnings and means-tested unemployment assistance once unemployment benefits have been exhausted. The Organization for Economic Cooperation and Development (OECD) produces regular estimates of the effective share of unemployed individuals’ lost net earnings that are replaced by unemployment insurance and other social assistance benefits (the net replacement rate). For a single worker with no children paid two-thirds of the average wage at the beginning of an unemployment spell, among the 40 countries ranked, the estimates for 2019 show the United States tied for 29th with Estonia (OECD, 2020).¹ Other OECD research placed the United States 33rd out of 34 OECD countries as of 2014 in the maximum duration of unemployment insurance benefits, ahead only of Hungary. A ranking that same year of 33 countries by pseudo-reciprocity rates, calculated as the ratio of the number of people receiving UI benefits

to the number of people unemployed, placed the United States 26th, ahead only of Turkey, the Slovak Republic, Poland, Hungary, Japan, Slovenia, and Lithuania (OECD, 2018a).

The United States can and should provide greater support to unemployed individuals who are looking for new jobs or seeking to upgrade their skills to transition to a new type of work. In this research brief, we provide background on the unemployment insurance system and explain how business practices such as the use of scheduling algorithms (associated with variable work hours), temporary agency workers, independent contractors, and online platforms (employing “gig workers”) not only make work more precarious but also leave many without access to UI benefits. We close with a discussion of ways to reform the UI system to expand coverage to more workers in precarious and nonstandard arrangements and of the use of UI benefits as a stipend for those who have lost their jobs and need retraining.

Background on Unemployment Insurance in the United States

The Social Security Act of 1935 established the foundation for the unemployment insurance system in the United States, which is operated as a federal-state partnership. The five main goals of the UI system are to (1) provide temporary partial wage replacement during involuntary unemployment, (2) prevent dispersal of employers’ workforces during temporary layoffs, (3) promote rapid return to work, (4) limit business downturns by maintaining aggregate purchasing power, and (5) encourage stabilization of employment in enterprises (O’Leary and Straits, 2004).

The unemployment insurance system is financed through state and federal payroll taxes. States levy what is called an experience-rated payroll tax on employers. Just as an individual’s car insurance premium is related to past claims, an employer’s state UI tax rate is based on the level of benefits paid out in the past to those who have been employees of the organization. The revenues from the state taxes may be used only to pay UI benefits. The federal tax revenues pay for the administration of the state programs, the public employment service, and loans made to states when the reserves accrued from UI taxes prove inadequate to pay benefits. Federal UI tax revenues also may be used to cover extended benefits as provided by the federal government during periods of high unemployment. Unemployment insurance programs operate in all states, the District of Columbia, Puerto Rico, and the Virgin Islands.

Federal law imposes minimal requirements on state programs, allowing states wide latitude in their practices. The result has been a system whose parameters vary greatly across states. At the start of 2020, the national average weekly benefit amount was \$373. Maximum state weekly benefits, however, ranged

from a low of \$235 in Mississippi to a high of \$1,234 in Massachusetts. The maximum potential duration for which an unemployed person could receive regular UI benefits under state program rules ranged from just 12 weeks in Florida and North Carolina to 28 weeks in Montana (U.S. Department of Labor, 2020a).

In the earliest years of the program, benefit levels and durations were modest. By the 1950s, enabled by accumulating system reserves, all states set UI benefits to replace approximately 50 percent of an unemployed worker's prior wage for at least 26 weeks. These standards were endorsed by blue-ribbon advisory councils and supported by employment research (NCUC, 1980; USACUC, 1996). Following research on work disincentives by economist Martin Feldstein (1974) and his advocacy for change while on the Council of Economic Advisers in the 1980s, UI benefits became taxable income in 1982, reducing effective income replacement. Deteriorating public finances, resulting in part from anti-tax fervor in many states, subsequently led to stagnating nominal benefit levels and wage replacement rates that have fallen since the early 1980s (O'Leary and Wandner, 2020).

The Great Recession depleted the UI trust funds in many states, which then had to borrow from the federal government to fulfill their obligations. Following the recession, rather than fully replenishing the trust funds, 10 states sought to mitigate the impact of the recession on employer taxes by reducing the maximum duration that the unemployed could potentially receive benefits from the standard 26 weeks (O'Leary and Kline, 2020).²

Qualifying for Unemployment Insurance

With various expansions since its beginnings in the 1930s, the U.S. unemployment insurance system today covers almost all organizations with paid employees. The precise laws governing UI coverage vary from state to state, but there are four main coverage exclusions—agricultural workers on small farms, household workers with low earnings, certain employees of religious organizations, and the self-employed. The exclusion of agricultural and household workers from coverage under the legislation that established the unemployment insurance system was an ugly outgrowth of Southern legislators' opposition to having the program cover black workers. At the time, such a large share of the black population worked in agriculture or domestic service that omitting those occupations from coverage provided a way to deny benefits to black workers in a statute that superficially was racially neutral (Perea, 2011).³

The self-employed, who comprise the largest category of workers not covered by the unemployment insurance system, are a diverse group. These workers include traditional business owners who may have employees and significant capital investment, independent contractors, gig workers who obtain work through online platforms or mobile apps, and informal workers who typically perform services for households, such as maintenance, child- and elder-care, and cleaning. Additionally, even employees who work for a covered employer will not qualify for unemployment benefits if they do not have sufficient prior earnings when they are laid off or if they fail to meet other UI eligibility requirements.

In contrast to the United States, a number of European countries have extended unemployment insurance coverage to the self-employed (Maquet, Maestri, and Thévenot, 2016). In some countries, the self-employed are covered on the same basis as other workers. In other cases, they must meet more stringent requirements to qualify for unemployment benefits, must make voluntary contributions to be covered, or are eligible only for means-tested unemployment assistance. Where participation in the unemployment insurance scheme is voluntary, the program tends to attract the self-employed most likely to need the protection it offers, raising the cost of participation and leading to low participation rates (OECD, 2018b). Across the European Union as a whole, the risk of not being eligible for benefits is notably higher for the self-employed than for permanent, full-time, wage and salary workers. Other groups at high risk of being ineligible for benefits under the rules of the European systems are those working part-time or on temporary contracts (Matsaganis et al., 2015).

During the current pandemic, for the first time in the history of the UI system, unemployment insurance was extended nationally to wage and salary workers who normally would not qualify for benefits and to the self-employed through a special Pandemic Unemployment Assistance (PUA) program. Problems with the reporting of data about this new program make it difficult to determine exactly how many people have been collecting PUA benefits, but a rough estimate is that, at the end of August 2020, the number was in the neighborhood of 10 million people (Casselmann et al., 2020). This would represent close to 40 percent of the total number of people receiving unemployment benefits as of that date.⁴ Whatever the exact figure, the size of the groups normally excluded from benefits is large. We discuss employees who do not qualify for UI benefits and the self-employed in turn.

Wage and Salary Workers: Determining Eligibility

Workers who lose their jobs with a covered employer must meet certain criteria to be eligible to receive unemployment benefits. Unemployment insurance eligibility rules are set to ensure that those

compensated are strongly attached to the labor force and temporarily jobless through no fault of their own. They must have been involuntarily separated from their job; with few exceptions, if they quit or were fired for cause, they do not qualify. Additionally, they must be available for and actively seeking work and may not refuse an offer of suitable work.

Labor force attachment is demonstrated by meeting what are referred to as monetary eligibility conditions. Monetary eligibility for unemployment insurance is determined primarily by earnings in a defined base period. In most states, the standard UI base period is the first four of the previous five completed calendar quarters before the date of claim for benefits. According to the most recently available full summary of state UI provisions, as of the beginning of 2019, workers in 37 states and the District of Columbia who did not qualify by virtue of their earnings in the standard base period were allowed to have their eligibility evaluated based on their earnings during a more recent period, typically the most recent four completed calendar quarters. The minimum base period earnings required ranged from a low of \$130 in Hawaii to a high of \$6,435 in Arizona to qualify for the minimum UI weekly benefit amounts of \$5 and \$172, respectively. States often also impose additional requirements, such as that the claimant must have earned more than some minimum amount in the quarter of the base period with the highest earnings, or that the claimant must have had earnings in at least two base-period quarters (U.S. Department of Labor, 2019).

Nonmonetary requirements ensure that a UI recipient is (1) involuntarily unemployed (i.e., was laid off from work) or voluntarily left work for good cause, (2) available for work, and (3) actively seeking work. Along with the monetary eligibility requirements, these conditions determine whether an unemployed worker initially qualifies for benefits. The second and third conditions must be satisfied on a continuing basis throughout a period of unemployment. If they are not satisfied in any given week, the worker is ineligible to receive benefits for that week. As noted, the experience rating of UI tax rates provides an inducement for employers to get involved in the benefit eligibility process. Employers are notified of UI claims by all recent employees and have an opportunity to object to their eligibility and provide evidence that unemployment payments are not due.

Even workers who are in covered employment and satisfy the job separation conditions may have insufficient base-period earnings to qualify for benefits if they are low-wage or part-time workers. As of the beginning of 2019, a worker in Arizona, Indiana, Michigan, Ohio, or South Carolina who worked 20 hours per week at the state's minimum wage for a full half-year would have had insufficient base-period earnings to qualify for UI benefits. In an additional 23 states, working 20 hours per week for three months

at the state's minimum wage would not have generated sufficient base-period earnings to qualify, even if other monetary eligibility conditions were satisfied.⁵

A periodic supplement to the Current Population Survey (CPS), most recently administered in 2018, has examined who among those reporting being unemployed applies for and receives benefits and, in recent waves of the supplement, the reasons for not applying for UI benefits.⁶ In 2018, among those who were unemployed because they lost a job (including those laid off and those in temporary jobs that ended), slightly over half reported applying for benefits, and about 70 percent of those reported receiving UI benefits. Among the unemployed who had lost a job but did not apply for benefits, slightly more than half indicated that they believed, for various reasons, they would not qualify. The two most common reasons cited were that their work history was insufficient to qualify for benefits (19.1 percent) and that the nature of their job separation (e.g., they quit or were fired) disqualified them for benefits (18.4 percent).⁷

In addition to having a sufficient work history, to qualify for unemployment benefits workers in many states must not only be available to work, they must be available for full-time work. A worker who loses a part-time job and is seeking a new part-time job may not qualify for UI benefits if the state requires availability for full-time work. This can be the case even if the person's availability is limited because of family obligations such as child- or elder-care.

The American Recovery and Reinvestment Act of 2009 offered cash incentives to states for UI modernization changes that broadened eligibility (O'Leary, 2011). One modernization option that helped states qualify for an incentive payment was to relax the availability requirement to allow unemployed persons who normally worked part-time to restrict availability to other part-time jobs. Twenty-five states qualified for modernization payments by permitting part-time availability. In some cases, that means workers whose hours are cut or who lose a second part-time job may qualify for partial unemployment compensation. The unemployment insurance programs in every state allow for such benefits, but as of the beginning of 2019, workers in 25 states who earned more than the state's statutory weekly benefit amount would have received no partial unemployment compensation. The cutoffs in most other states were only a little higher (West et al., 2016; U.S. Department of Labor, 2019). Weekly benefit amounts typically are no more than half of weekly earnings and less for those with higher earnings. Limiting eligibility for partial benefits in this way means, for example, that a person who holds two, equal-paying, 20-hour-a-week jobs and loses one of them would not receive any partial unemployment payment. The same generally would be true for a worker whose hours on a single primary job were cut in half.⁸

The Self-Employed

The self-employed include anyone who is not a W-2 employee (among other things, a W-2 employee is someone whose employer must deduct certain taxes from his or her pay). Traditionally, the main justification for excluding the self-employed from UI coverage has been the so-called problem of moral hazard. The self-employed generally have more discretion over their work hours than W-2 employees, and so in this case the person at risk of unemployment also controls exposure to the risk. A competitive unemployment insurance market for the self-employed arguably would collapse because of adverse selection; only people who intended to stop working would participate. Even a public UI program with compulsory participation could be expensive to finance because of moral hazard.

Despite these concerns, many European countries have chosen to extend unemployment insurance coverage to the self-employed. The moral hazard problems just noted are dealt with in part by requiring the self-employed to register with the employment service and provide evidence of active job search. In the United States, prior to the current pandemic, unemployment insurance had only ever been extended broadly to the self-employed as a temporary measure in areas affected by natural disasters, through the federal Disaster Unemployment Assistance program. In these events, unemployment was so widespread that the moral hazard problem was deemed minimal.

Distinguishing who is an employee and who is self-employed as an independent contractor is not always a straightforward task. Generally, classification depends on who controls work activities and the organization's finances, the nature of the decision-making relationship between the parties, and workers' opportunity for profit or loss. There is, however, a continuum of work arrangements along these various dimensions. At one end of the spectrum are employees of an organization that directs all of their work activities, covers all of their business-related expenses, and controls revenues. At the other end are business owners and some independent contractors who solicit and sell products and services to clients, determine their work activities, and enjoy the profits or bear the losses of their business. In between these extremes are independent contractors who sometimes depend heavily on just one or a small number of clients for work and have only partial discretion over their work activities and schedules. In these cases, the line between W-2 and self-employment can blur.⁹

Complicating matters, the test used to determine independent contractor status may vary for different purposes and across states. For instance, somewhat different criteria may be used to determine whether a worker is an employee for social security and Medicare tax purposes than are used for workers'

compensation purposes or for determining coverage under the Fair Labor Standards Act, which provides wage and hours protections for employees, among other things. And states use several different tests to determine employee status for the purpose of unemployment insurance (de Silva et al., 2000). Although rare, it is thus possible for a worker to be classified as an independent contractor for some purposes and as an employee for others.

Much of the current policy debate over worker classification has focused on platform companies, whose workers often occupy a gray zone, displaying characteristics of both employees and the self-employed. California's Assembly Bill 5 (AB5), signed into law in September 2019, clarified when firms must classify workers as employees, and proponents have argued it will reduce misclassification. In most cases, the law required platform companies to reclassify their independent contractors as employees. A successful initiative on the ballot in California in November 2020 (funded by Doordash, Uber, and Lyft), however, exempts app-based drivers from AB5. Instead, the initiative's language stipulates that these drivers will continue to be classified as independent contractors and be covered by labor and wage policies specific to rideshare drivers. In September 2020, in an apparent response to AB5 and pressure from platform companies (Rosenberg, 2020), the U.S. Department of Labor issued a proposed interpretative rule that similarly would make it easier to categorize certain workers, such as gig workers, as independent contractors (Penn, 2020).

Despite the recent policy attention given to the classification of platform workers, this group represents a very small share of the workforce.¹⁰ An issue of arguably greater policy relevance involves not the legal test used to classify workers but the weak enforcement of worker classification laws. The likelihood that an employer's classification of its workers will be challenged is low, and there are concerns that many firms misclassify employees as independent contractors out of ignorance or as part of a deliberate business strategy (see, e.g., General Accountability Office, 2009; Carré, 2015; National Employment Law Project, 2017). The magnitude of independent contractor misclassification is not easily documented. Many of the available estimates are derived from state unemployment insurance agency audits. Studies based on UI audits in 21 states found that, as of 2012, between 11 percent and 30 percent of employers misclassified workers as independent contractors (Carré, 2015, 9).¹¹ Moreover, the prevalence of misclassification is high among these employers. A study of 2003–2004 Michigan audit data found that 30 percent of audited employers misclassified at least one employee as an independent contractor; among those employers, 24 percent of employees were misclassified (Belman and Block, 2009). Misclassification appears to be particularly widespread in some industries such as construction, transportation, and home services. Misclassification is also common when long subcontracting chains

separate the client from the workers who perform services for the client (Weil, 2014, 2017; Bernhardt et al., 2009). Requiring that workers being treated as independent contractors form limited liability companies of questionable validity is a common tactic used to help shield companies from worker misclassification lawsuits (Weil, 2017; Armstrong, Elliott, and Tobin, 2020).

These considerations make it important to know the number of people working under self-employment arrangements, particularly independent contractor or informal, nonemployee arrangements. The Contingent Worker Supplement (CWS) to the CPS is the main source of information on independent contractors in the United States. Administered six times between 1995 and 2017, the CWS estimates that the share of the workforce in independent contractor arrangements ranged from 6.3 percent to 7.4 percent during this period and showed no consistent trend. According to CWS data, the share of workers who are self-employed but not independent contractors has declined over time from 6.2 percent in 1995 to 4.4 percent in 2017 (Abraham and Houseman, forthcoming). Other data sources suggest, however, that the CPS and CWS may understate the size of the independent contractor and other self-employed workforces and may have missed some growth in the former. Research using administrative tax data shows higher levels of self-employment and growth in the share of workers with self-employment income (Abraham et al., in press; Abraham et al., forthcoming; Jackson, Looney, and Ramnath, 2017; Katz and Krueger, 2019; Lim et al., 2019). The growth appears to arise primarily from those who are in independent contractor arrangements (Jackson, Looney, and Ramnath, 2017; Lim et al., 2019).

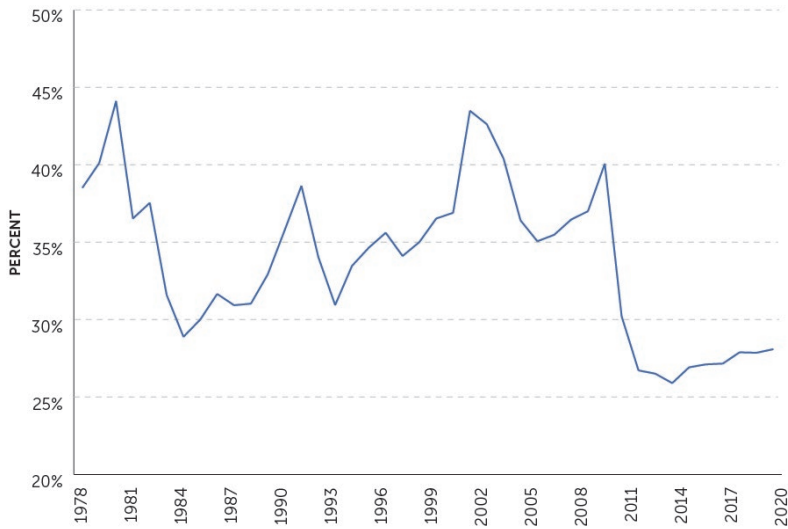
One potential reason for these discrepancies is that the CPS may misidentify many individuals who are classified as independent contractors (whether legally classified or not) as employees. In the CPS, those who report being employed are asked “Were you employed by government, by a private company, a nonprofit organization, or were you self-employed or [if applicable] working in the family business?” Those working as independent contractors may not think of themselves as being self-employed, a term some may associate with business ownership. Moreover, it would be accurate for those working on a contract basis for an organization to respond that they are employed by the organization; if they do, they will be coded as wage and salary workers because it is implicitly assumed that an individual working for an organization is an employee. Evidence from a Gallup survey module on contract work suggests the incidence of such miscoding is substantial (Abraham, Hershbein, and Houseman, 2019).

Reasons for the Low and Declining Share of the Unemployed Who Receive Unemployment Insurance Benefits

An oft-cited indicator of problems with the U.S. unemployment insurance system is the low and declining share of the unemployed who receive UI benefits. Figure 1 displays the average annual share of unemployed individuals receiving benefits under regular state UI programs over the last four decades.¹² Because only unemployed persons who have lost a job are eligible for unemployment insurance benefits, we would expect the reciprocity rate to be well below 100 percent. That said, while the reciprocity rate is sensitive to the stage of the business cycle—rising somewhat during recessions when a higher share of the unemployed are job losers—its long-term trend has been downward. The decline was especially large following the Great Recession, and since 2011, the UI reciprocity rate has been consistently below 30 percent. As previously noted, a higher share of the unemployed receive benefits in almost every other developed country than in the United States.

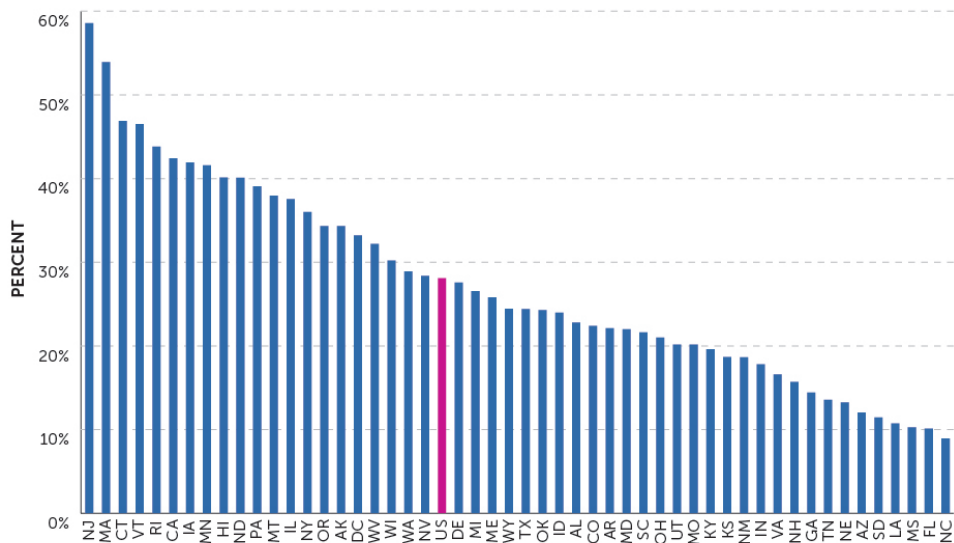
A variety of reasons have been offered for the recent decline in the UI reciprocity rate. Figure 2, which displays the 2018 reciprocity rate by state, suggests that the low aggregate rate can be traced, at least in part, to policy decisions in some states. In a year when all states' economies were relatively strong, the UI reciprocity rate exceeded 40 percent in nine states, but fell to between just 10 percent and 15 percent in eight states, most located in the southeast. As noted, the high level of unemployment in the Great Recession depleted state UI trust funds. Some states responded by reducing the generosity of benefits or the maximum duration they can be received. Historically, the stated goal of the UI system was to set benefit levels at approximately 50 percent of lost wages for most UI recipients (Blaustein, 1993). Recent research finds that, balancing the value to workers of being able to better maintain consumption while unemployed against the disincentive to search for work that may be created by overly generous unemployment benefits, a higher replacement rate may be socially optimal.¹³ Although the wage replacement rate is about 50 percent for those receiving up to the maximum weekly benefit amount, because that maximum has not kept pace with wage growth in most states, the share of UI benefit recipients who receive half of lost wages has fallen. In addition, as of the start of 2020, the potential duration of regular state UI benefits in 10 states had been reduced to fewer than 26 weeks, which had been the common minimum standard since the 1950s. Because they reduce the value of the stream of payments a claimant can expect to receive, lower real benefits and shorter potential durations can reduce the incentive for an unemployed person to apply for benefits. Among those who do apply, the actual average duration of benefit receipt is shorter; this reduces the average number of insured unemployed in any week, which also lowers the reciprocity rate.

Figure 1. Percent of Unemployed Receiving Regular State Unemployment Insurance Benefits, 1979–2019, Annual Averages



Source: U.S. Department of Labor, Employment and Training Administration, https://oui.doleta.gov/unemploy/data_summary/DataSum.asp

Figure 2. UI Reciprocity Rate by State, Annual Average, 2019



Source: U.S. Department of Labor, Employment and Training Administration, https://oui.doleta.gov/unemploy/data_summary/DataSum.asp

These and related policies may reflect a change in attitude about the UI system among policymakers in certain states. Instead of viewing unemployment insurance as a program to support productive job search and improve the efficiency of job matches, the policy posture in some states is that unemployment insurance is simply a business cost to be minimized. Low UI tax rates are a feature touted by economic development business location marketers. To further reduce the tax burden of financing UI benefits, the application process can be set up as a hurdle to benefit access. A particularly stark case is Florida, which changed the process in 2011 to require, among other things, that applicants file through an automated online system available only in English and take a 45-question online skills assessment test. Although some of the new requirements were deemed discriminatory in legal challenges and ultimately changed, the unemployment insurance filing process remained difficult, particularly for low-educated and low-wage workers (Wentworth and McKenna, 2015). Across the country, benefit denials on procedural grounds have increased significantly as states have tightened their filing and documentation requirements (Wentworth, 2017).

The decline in the reciprocity rate also is related to changes in the economy and the nature of work. For example, the reciprocity rate is positively associated with the rate of unionization (O’Leary and Wandner, 2020). One possible reason is that unions may provide valuable information about the UI application process to members who are laid off. Declining rates of unionization may well have contributed to the decline in the reciprocity rate.

Additionally, growth in nonstandard work arrangements, along with the relative increase in low-wage employment, likely has reduced the share of those losing their jobs who qualify for UI benefits. As noted above, the use of independent contractors, who are not eligible for unemployment insurance, is widespread in some industries; some research based on administrative data also suggests the size of the independent contractor workforce has grown in recent years (Jackson, Looney, and Ramnath, 2017; Lim et al., 2019). The use of temporary help and other third-party contracting arrangements has grown in manufacturing, transportation and warehousing, and construction (Dey, Houseman, and Polivka, 2012, 2017; Bernhardt et al., 2016). In addition, the increased use of scheduling algorithms in retail, hospitality, and other service industries has meant that workers in these sectors receive relatively little notice about their work schedules, and their hours and earnings vary considerably from week to week (Henly and Lambert, 2014; Lambert, Fugiel, and Henly, 2014; Lambert, Henly, and Kim, 2019).¹⁴ Both third-party contracting arrangements, which often are associated with lower wages (Weil, 2014), and variable hours and earnings may mean that employees do not meet minimum earnings requirements for unemployment insurance.

The UI reciprocity rate during the first quarter of 2020 jumped to 37 percent, according to U.S. Department of Labor data, reflecting the surge in unemployment insurance claims in March that came with the first wave of COVID-19 layoffs. With the number applying for regular UI benefits exceeding 1 million in all weeks in the second quarter of 2020, the second quarter reciprocity rate should be at an historic high. The very high numbers applying for and receiving unemployment insurance during the pandemic reflect provisions included in the Coronavirus Aid, Relief, and Economic Security (CARES) Act to increase the adequacy of benefits, thereby making it more attractive for the unemployed to apply for benefits. As discussed above, the CARES Act also expanded coverage under the Pandemic Unemployment Assistance program to many individuals, including the self-employed, who would not have qualified for benefits under the regular state UI programs.

Recommendations: Expanding UI Coverage for Workers in Precarious and Nonstandard Arrangements

The economic fallout from the pandemic has focused policy attention on the inadequacies of the unemployment insurance system in the United States. The provisions in the CARES Act pertaining to unemployment insurance were temporary measures to deal with extraordinary circumstances. While a full discussion of necessary UI reforms is beyond the scope of this essay, we discuss several steps that we believe should be taken to expand benefits in more ordinary times to more job losers who do not qualify for UI benefits and who often work in precarious or nonstandard work arrangements.¹⁵

ALLOW WORKERS TO COUNT THEIR MOST RECENT EARNINGS TOWARD DETERMINING ELIGIBILITY

Among other requirements, under the standard rules in place in most states, a worker must have earnings in covered employment above a specified threshold during the first four of the five most recently completed quarters to qualify for UI benefits. Eligibility for someone who became unemployed in mid-June, for example, would be based on his or her earnings during the previous calendar year. Not counting a person's most recent earnings toward benefits qualification disadvantages those who are new to the labor market or have irregular work histories. This rule may have made sense in the past when long data-processing lags meant that earnings data for the most recent quarter typically were not available, but it does not make sense today. As already noted, as of the start of 2019, 37 states and the District of Columbia had adopted rules allowing workers who did not qualify for benefits using the standard approach to use earnings during a more recent base period, typically the most recent four completed

quarters, to establish benefit eligibility (U.S. Department of Labor, 2020a). This should be the practice in all states.

DETERMINE ELIGIBILITY BASED ON HOURS RATHER THAN EARNINGS

The primary rationale for requiring earnings above some threshold to qualify for unemployment benefits is to ensure that recipients have a significant attachment to the labor market. Expressing the benefit qualification threshold in terms of earnings rather than hours, however, significantly disadvantages low-wage workers, who must work more hours to attain any given level of earnings. To help level the playing field for low-wage workers, we recommend that other states adopt the approach already in place in the state of Washington, where the requirement to qualify for unemployment benefits is a minimum number of hours worked rather than a minimum level of earnings.

Few states currently collect the information from employers that would be needed to implement an hours standard as the default approach to determining benefit eligibility. States should take steps to begin collecting information on hours worked, but in the interim, there are alternative means of ensuring that low-wage workers with significant labor market attachment qualify for benefits. First, states could adjust their earnings qualification thresholds so that someone who worked, say, 20 hours per week at the state minimum wage for at least one quarter during the base period would have enough earnings to qualify for benefits. This is currently not the case in 28 states. Second, working more than some minimum number of hours could be offered as an alternative route to qualifying for benefits for those who cannot satisfy the minimum earnings requirement, with employers contacted to verify hours for workers who make claims on that basis.

DROP THE REQUIREMENT THAT THE UNEMPLOYED SEEK FULL-TIME WORK

The common requirement that beneficiaries seek full-time work in order to qualify for UI benefits is another factor that may limit access to benefits for precarious workers. Whether because of family responsibilities or the nature of the jobs that are available to them, many precarious workers hold part-time positions. If part-time work offers the best or most feasible employment option for an unemployed individual, searching for such work should not disqualify that person from benefits. We recommend that any unemployed worker searching for part-time work of 20 hours or more per week who otherwise qualifies for unemployment insurance benefits be allowed to collect them.

REFORM PARTIAL UNEMPLOYMENT INSURANCE BENEFITS

Although every state provides for the payment of partial unemployment benefits under certain circumstances, the benefit formulas are far from generous. In a majority of states, for example, a low-wage worker whose earnings are cut in half would receive no benefits. The earnings reductions that would be needed before any partial benefits would be payable is even larger for higher-wage workers. We recommend that states reevaluate their partial unemployment benefit formulas to better protect workers who lose a substantial fraction of their work hours, including in the case where this occurs because the worker has lost a second job. Under recent changes made to partial benefits in Vermont, workers are eligible for benefits up to the point where their earnings equal twice their weekly benefit amount and the benefit payable is equal to the weekly benefit amount minus half the amount the worker has earned. These provisions accomplish exactly what we have in mind. We recommend that other states raise the maximum amount their workers can earn without losing eligibility for partial benefits and adopt benefit formulas that reduce the benefit amount by some fraction of the amount earned up to that maximum earnings level rather than dollar for dollar.

SIMPLIFY THE APPLICATION PROCESS

Several other reforms to the UI system could help precarious workers with unstable employment and irregular earnings to access benefits. One simple yet especially important change would be to make it easier to apply for unemployment benefits. The COVID-19 crisis has drawn attention to the lack of ongoing investment in the IT infrastructure needed for an unemployment insurance system to operate smoothly. Modernizing this infrastructure should be a priority and would do a great deal to ensure that states are able to process benefit applications efficiently and expeditiously.

State policy choices also matter. Many states have moved to having workers file for benefits primarily or even exclusively online, and reductions in staffing at many state unemployment agencies mean that reaching someone on the telephone or in person can be difficult (Balducci and O’Leary, 2018). Some states also have imposed additional requirements, such as that workers collecting unemployment benefits post a résumé online through the employment service, another task that a less-educated worker may find difficult. While there is a legitimate interest in ensuring that those collecting unemployment insurance benefits are, in fact, entitled to them, states should make the process of applying for benefits as straightforward as possible and, in particular, should make telephone or in-person application and reporting options readily available to those who need them. Staff assistance also should be available to

any UI claimant undertaking an active job search to provide help with résumé preparation and job applications.

PROVIDE A SAFETY NET FOR SELF-EMPLOYED WORKERS

A significant challenge in the modern economy is how to provide a safety net for self-employed workers who generally are ineligible for unemployment insurance. It is difficult to know whether a self-employed person is working less because no work is available or by choice. For this reason, although this has been done in some European countries, we do not advocate for blanket extension of coverage to the self-employed under the existing unemployment insurance program. On the other hand, as discussed, the self-employed are a heterogeneous group that includes business owners, independent contractors (including gig workers who obtain work through online platforms or mobile apps), and workers in informal nonemployee arrangements. Changes in technology and other factors are likely to contribute to growing rates of self-employment in the coming years, and many of these workers are likely to be exposed to the risk of considerable income fluctuation.

There are examples of unemployment insurance coverage being extended to the self-employed on a voluntary basis. In California, for example, business owners who have employees may elect to be covered under the state's unemployment insurance program. As already discussed, there are also some European countries in which the self-employed are allowed to opt into unemployment insurance coverage. In general, however, few self-employed people choose to be covered when enrollment is voluntary.

Another approach sometimes proposed for providing unemployment insurance coverage to the self-employed involves establishing self-funded individual security accounts (see, for example, Kletzer and Rosen, 2006; Feldstein and Altman, 2007; Gruber, 2016). Some proposals would establish such accounts for everyone, but our main interest lies with how they might function for the self-employed. The basic idea is that self-employed workers would pay a small fraction of their wages into individual funds that they could draw upon in the event of not being able to find work (or, in some cases, if other needs arose). Some proposals cap the amount that can be accumulated, with money not spent before retirement rolled over into a retirement account. The purported advantage of these accounts is that they would ameliorate the moral hazard problem associated with conventional unemployment insurance, because money taken from the account would in effect come out of the worker's own pocket. Even assuming that workers are sufficiently forward-looking to understand that taking money out of the account today could leave them less well-off in the future, a problem arises when the account balance falls to zero. If workers can only

withdraw up to the amount they have contributed, such accounts might fail to protect those who need unemployment insurance the most. Yet, if workers are entitled to draw benefits even when their account balance is negative, the moral hazard problem is reintroduced.

Instead, we advocate for two other approaches we believe are more viable. The first pertains to independent contractors, many of whom rely primarily or exclusively on a single client for work. Research has concluded that a sizable number of these workers should have been categorized as employees rather than as independent contractors (see, e.g., General Accountability Office, 2009; Carré, 2015; National Employment Law Project, 2017). Workers who are misclassified do not have access to unemployment insurance or workers' compensation. Additionally, worker misclassification is strongly associated with wage and hours violations, including wage theft, and with underpayment of taxes (Weil, 2014, 2017; Carré, 2015). Employers may realize substantial cost savings by classifying their workers as independent contractors, which, coupled with weak enforcement of existing laws, incentivizes employers to misclassify their workers (Belman and Sojourner, 2019).

To address misclassification, we urge greater clarity in who may be classified as an independent contractor. Rules governing classification should be based on the fundamental realities of the employment relationship and the locus of control, and they should discourage legal maneuvers intended to shield companies from misclassification lawsuits—such as the formation of long subcontracting chains that artificially separate employers from workers and the establishment of what many argue are sham limited liability companies. Moreover, existing rules must be enforced. A 2009 report from the Government Accountability Office called for greater coordination and enforcement to reduce worker misclassification, and in the initial years following the report, considerable progress was made in improving collaboration across federal agencies and states to tackle the problem (Weil, 2017). Those initiatives should be restarted. Such actions could significantly reduce the ranks of the self-employed and yield many benefits for workers, including access to unemployment insurance.

Of course, not all self-employed workers should be reclassified as employees. A complementary policy therefore would provide protection to the most vulnerable by establishing a means-tested Job Search Allowance intended to assist self-employed individuals who are seeking jobs. As we envision this allowance, it would be available to self-employed individuals with earnings histories comparable to those required to qualify for normal unemployment insurance benefits. It would pay a flat weekly benefit amount of half the average weekly benefit paid to unemployed workers in the state. The benefit would be funded out of general revenues. As with unemployment insurance, beneficiaries would be required to be

actively engaged in searching for jobs. Such a benefit would help self-employed individuals whose business activity has failed while they transition into new work.

PROVIDE UNEMPLOYMENT INSURANCE AS A STIPEND DURING TRAINING

If increasing numbers of workers lose their jobs because of new technology adoption, globalization, or other economic disruptions, more will require training to find new work. Current federal funding for training of displaced workers is limited. In program year 2018, only 11.2 percent of dislocated workers participating in programs funded by the federal Workforce Innovation and Opportunity Act (WIOA) received any training (U.S. Department of Labor, 2020b, Table III-12). Other training dollars are available from various state and private funds, but arguably these amounts are inadequate and would need to be significantly increased to meet demand, even if the rate of worker displacement from technology does not rise (Hanks and Madland, 2018).

The unemployment insurance system can play an integral role in identifying workers in need of training and providing a stipend during the training period. The federal-state workforce system, largely operates through a network of approximately 2,400 American Job Centers located in communities across the country. Over the last couple of decades, great strides have been made to better integrate and coordinate service delivery, with the collocation of various public employment and training services in the job centers, also known as “one-stops.” In some areas, unemployment insurance services also are provided alongside services in the job centers. Nevertheless, program silos still exist. Job center staff, for example, do not routinely inform clients about other training dollars that might be available through state and privately funded programs. Using the job centers as clearinghouses for information on funding for job training could significantly improve service delivery to those in need (Hershbein, 2015).

In addition to needing money to cover the costs of training, workers who lose their jobs and undergo job training may need income support while they train for new jobs. This is especially likely for workers from low-income households. For many, unemployment insurance can fill that need. The work-search requirement may be waived for those participating in training through WIOA, and job center staff also may be able to waive the work search requirement for those who participate in training through other programs. We anticipate that the UI system could play an even more important role in the future in providing stipends for displaced workers who require training.

Conclusion

Although technological advances and globalization carry substantial benefits, they also harm many who lose their jobs and livelihoods as a result. A strong social safety net is essential for supporting those harmed by change and, more broadly, for garnering widespread public acceptance of change. The unemployment insurance system is the major vehicle for providing income assistance to those who lose their jobs through no fault of their own. Particularly in recent years, however, a declining share of the unemployed has received unemployment insurance, in part because fewer of those who lose their jobs qualify for benefits. And, many who are left out of the unemployment insurance system are particularly vulnerable to economic change and dislocation.

This situation has arisen because the basic structure of the unemployment insurance system in the United States has not adequately adapted to changes in the nature and organization of work. Goals of much-needed reform to the UI system should include better protecting those in precarious and nonstandard work arrangements by expanding coverage to low-wage and part-time workers and those with unstable work schedules. Providing greater access to benefits among employees in precarious arrangements will cost money—as will reforms to address other pressing UI issues such as declining wage replacement rates—and this means their implementation will require changes to the existing UI financing structure. UI benefits are financed through a payroll tax on employee wages. Federal law stipulates that, at a minimum, states must tax the first \$7,000 of an employee's earnings—an amount that has not increased since 1983. Many states have higher taxable wage bases, but the amount of wages that are taxed generally has not kept pace with inflation (von Wachter, 2019). Although a full discussion of necessary UI reforms is beyond the scope of this essay, one important component will be to strengthen UI financing by expanding the taxable wage base and indexing it to inflation (O'Leary and Wandener, 2018).

Problems of moral hazard make extending unemployment insurance to the self-employed particularly challenging. Nevertheless, the swelling ranks of independent contractors and gig workers and the economic vulnerability of these groups also warrant a policy response. Clarifying and enforcing regulations on who may be treated as an independent contractor will increase the number who are classified as employees and are thereby covered by unemployment insurance and other social insurance programs. For those who are self-employed and lose their jobs, providing a modest, means-tested, and time-limited job search assistance stipend, funded through general revenues, would be an effective way to provide income assistance to those most in need.

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Endnotes

- 1 The replacement rates calculated by the OECD compare net income in unemployment to net income in employment. In addition to unemployment benefits, the net replacement rates reflect other cash benefits that may be available to unemployed individuals, such as means-tested unemployment compensation, housing benefits or family assistance. These other benefits often differ by family type, with many countries providing additional assistance to families with children.
- 2 The 10 states that reduced potential durations to less than 26 weeks following the Great Recession were Arkansas, Florida, Georgia, Idaho, Illinois, Kansas, Michigan, Missouri, North Carolina, and South Carolina. Illinois later restored the maximum potential duration to 26 weeks, but as of the start of 2020, the maximum duration in Alabama had been reduced to 14 weeks. In some of these states, the maximum duration of benefits is tied to the state unemployment rate (O’Leary and Kline 2020, U.S. Department of Labor 2020a).
- 3 Today, agricultural employers who pay \$20,000 or more in wages in a quarter or employ more than 10 workers, as well as households that pay \$1,000 or more in wages to domestic employees in a quarter are required to provide UI coverage. Religious organizations are not required to cover employees who have duties of a religious nature, but in many states they are required to cover employees performing secular duties.
- 4 As discussed by Casselman et al. (2020), the long lags that have been experienced in processing PUA claims have complicated the interpretation of Department of Labor data on the number of claims. At the point when a person’s claim is approved, the data reflect all of the weeks for which retroactive payment is being made. In addition, some states have experienced problems with fraud. Although fraudulent claims may be weeded out, unless or until that happens, they are reflected in the claim counts.
- 5 In the state of Washington, eligibility for benefits is based on hours worked rather than earnings. In the remaining 21 states and the District of Columbia, working 20 hours per week for three months at the state’s minimum wage would satisfy the base period earnings requirement.
- 6 The CPS supplement on UI filers and nonfilers has been administered five times (1976, 1989, 1993, 2005, and 2018).
- 7 These figures are based on the authors’ tabulations of the data. Vroman (2009) provides a detailed analysis of the 2005 nonfilers supplement.
- 8 Workers may access pro-rated benefits if their employer sets up a work share or short-time compensation (STC) plan with the state. Currently, 26 states offer an STC program as part of the state’s unemployment insurance system. Under STC, an employer faced with a temporary reduction in business reduces workers’ hours in lieu of laying off workers. The work share plan allows employees to collect pro-rated unemployment benefits.
- 9 Recognizing this situation, Harris and Krueger (2015) proposed creating a third category of worker that they termed independent workers. This category, which would apply to independent contractors such as ride-share workers deemed to occupy a gray area, would be granted some worker protections not given others who are self-employed.
- 10 Workers who obtained work through online platforms or mobile apps that mediated the payment for their services made up only about 1 percent of the employed in 2017, according to data collected in the Bureau of Labor Statistics Contingent Worker Supplement (Bureau of Labor Statistics, 2018).
- 11 Carré (2015) notes that because the purpose of audits is to identify fraud and recover tax revenues, they do not randomly sample businesses. Researchers extrapolate from the audit studies to estimate the national incidence. The direction of any bias in these estimates, however, is unclear. The National Employment Law Project (2017) argues that studies based on audit data may understate the incidence of misclassification because misclassification is especially likely among employers who do not report any workers as employees, and these employers are not audited.
- 12 During recessions, the duration of benefits often is extended under programs funded partially or entirely by the federal government. Our focus here, however, is on the regular state UI programs.
- 13 For a summary of this research, see von Wachter (2019).
- 14 There has been a notable structural increase in involuntary part-time employment in service industries, particularly retail and hospitality, which make heavy use of scheduling algorithms (Dillender, Heinrich, and Houseman, forthcoming; Valletta, Bengali, and van der List, forthcoming).

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- 15** Other critical issues for UI reform include improving benefit adequacy and putting the system financing on a sounder footing.