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DISQUALIFICATIONS FOR UNEMPLOYMENT COMPENSATION IN THE DISTRICT OF COLUMBIA

Unemployment compensation provides monetary benefits for individuals who are unemployed through no fault of their own. Under state unemployment compensation programs, authorized by the Social Security Act of 1935, employers contribute to a central fund in amounts based on the level of benefits paid to former employees in the past. In the District of Columbia, the District of Columbia Unemployment Compensation Act provides unemployment benefits to those separated from employment.


3. The amount of contributions are based on the employer's experience rating, so that an employer who has lost many employees will pay at a higher rate than one who has lost few. See D.C. Code §§ 46-302 to 46-303 (1973).


5. See D.C. Code § 46-309 (1973). In order to become eligible for unemployment benefits, a District employee must file a claim with the Bureau of Employment Security of the District of Columbia Department of Labor. The claimant must have earned a set amount of wages in his base period before he is eligible for benefits. Base period means the first four out of the last five completed calendar quarters immediately preceeding the first day of the individual's benefit year. The benefit year is a 52-week period beginning with the first week that the individual files a valid claim for benefits. Thereafter, the 52-week period
but subjects some workers to periods of ineligibility by its disqualification provisions.\(^6\) The major circumstances justifying disqualification are: voluntarily leaving one's job without good cause; discharge because of misconduct by the employee; failure to apply for or accept suitable reemployment; and unemployment caused by a labor dispute.\(^7\)

Significant changes were made in the local unemployment compensation plan with the enactment of the District of Columbia Unemployment Compensation Act Amendments of 1978.\(^8\) Under the new act, the period of disqualification for voluntary leaving without good cause and for misconduct, which formerly varied from four-to-nine weeks, was increased to six-to-twelve weeks.\(^9\) In addition, the Act provides for a ten per cent reduction in benefits to any individual found to have voluntarily left employment without good cause or to have engaged in misconduct leading to dismissal.\(^10\) This reduction only applies when, during the preceding year, benefits paid out of the fund exceeded contributions and interest paid into the fund.\(^11\)

The Department of Labor (DOL) has established guidelines for the states to follow in enacting legislation.\(^12\) These guidelines have been followed to some extent in the District of Columbia's unemployment compensation plan. This Note will consider the 1978 changes with a view toward how they reflect unemployment compensation policy and will offer suggestions for further changes in the plan. Also included is a survey of the application of the law of unemployment compensation in the District of Columbia.

\(^6\) For the specific length of time for each type of disqualification, see notes 51, 75, 80 and 88 infra.

\(^7\) D.C. Code § 46-310(a)-(c), (f) (1973). See also notes 48-98 and accompanying text infra.


\(^9\) D.C. Code § 46-310(a), (b) (Supp. VII 1980).

\(^10\) Id. § 46-310(f).

\(^11\) Id. The District of Columbia City Council also has the option of disapproving the lower payments.

\(^12\) See Bureau of Employment Security, U.S. Dep't of Labor, Unemployment Insurance Legislative Policy (1962) [hereinafter cited as Legislative Policy].
I. DISQUALIFICATION PROVISIONS IN UNEMPLOYMENT COMPENSATION PLANS

A. Federal Recommendations by the Department of Labor

The enactment of state unemployment compensation laws was given initial impetus by the Social Security Act of 1935. Under the Act, the federal government provides funding for the administration of the state unemployment compensation plans. Each state plan is reviewed by the DOL to determine whether the state is complying with the Act's provisions. Funding may be terminated if unemployment compensation is denied in a substantial number of cases to individuals entitled to benefits under state law. Nevertheless, a state is not required to enact unemployment compensation laws in full conformity with the federal plan. Thus, the Social Security Act provides only general recommendations by which states may administer benefits. Under section 503(a)(1), for example, the method of administration must be reasonably calculated to insure full payment of unemployment compensation when due. In addition, the federal

15. Id. § 503(a).
16. Id. § 503(b)(1).
17. The Act also sets specific requirements for handling of funds and record-keeping. Id. §§ 503(a)(2), (4)-(9) (1976). Once the requirements are met, the federal government makes payments to the states out of the Unemployment Trust Fund. Id. §§ 1101-1104. The Federal Unemployment Tax Act makes specific requirements for the taxation of employers. Id. §§ 3301-3311.
18. Id. § 503(a)(1). This requirement was interpreted in California Dept. of Human Resources v. Java, 402 U.S. 121 (1971), in which the Supreme Court found that "when due" means when benefits result from a hearing in which both parties had notice and were permitted to present their respective positions. In that case, the claimant was determined to be eligible for benefits in the initial interview. However, when the employer appealed, the employee's benefits were suspended during the appeal. This suspension provision in the California statute was found to be contrary to the "when due" requirement. The Court in Java avoided the question of whether a claimant has a due process right to a hearing, but a federal district court has found that a claimant is entitled to a full evidentiary hearing before termination of benefits. See Wheeler v. Vermont, 335 F. Supp. 856 (D.C. Vt. 1972) citing Goldberg v. Kelly, 397 U.S. 254 (1970). The requirements of such a hearing are: timely and adequate notice of the reasons for termination; effective opportunity to defend; the right to retain counsel; and findings of fact based on the record. 397 U.S. at 266-71. See Hawkins v. District Unemployment Bd., 381 A.2d 619 (D.C. 1977). If no such hearing is provided by the federal employer, the state agency may make its own determination of the employee's entitlement to benefits. See Smith v. District Unemployment Compensation Bd., 435 F.2d 433, 439 (D.C. Cir. 1970); Pub. L. No. 94-566, § 313, 90 Stat. 2667 (amending 5 U.S.C. § 8506(a) (Supp. 1979)). Prior to 1976, the state was required to accept the findings of the federal
statute requires an opportunity for a fair hearing for all individuals whose claims are denied.19 These broad federal standards have allowed the states to develop widely varying unemployment statutes.20 Although critics of the Act have called for stricter federal standards,21 Congress has been reluctant to diminish the states' role in developing their own unemployment compensation programs.

Although the legislative scheme discourages federal involvement, the DOL in 1962 issued an unemployment insurance legislative statement of policy which was intended to aid the state legislatures in designing unemployment compensation programs.22 With regard to disqualifications, these DOL recommendations stress that an unemployment insurance system should give insured workers confidence that they will receive benefits during periods of involuntary unemployment; therefore, the system should not contain unreasonable conditions and restrictions.23 The Labor Department suggests that, in all cases where a claimant is found eligible, there be no more than a one week waiting period before benefits begin. Most states have complied with this recommendation in order to allow time for a determination of eligibility for benefits and to preserve the assets of the state unemployment fund by exempting those unemployed for such a short period.24 This one week waiting period has been found to be consistent with the requirement of section 503(a)(1) of the Social Security Act that unemployment compensation programs be calculated to insure full payment of benefits when due.25 In order to demonstrate whether the worker

employer if a fair hearing was provided, but now the state agency may make its own inquiry into the matter. Id.

19. Because termination from federal government jobs is a common occurrence in the District of Columbia, there often is a problem with conflicting procedures between the District and the federal government. An employee terminated from a federal government job has a right to a fair hearing. See 42 U.S.C. § 503(a)(3) (1976). Also, unemployment benefits are a form of statutory entitlement for those eligible; therefore, proper procedures must be followed before the right may be taken away. See note 18 supra.

20. See generally UNEMPLOYMENT INSURANCE SERVICE, EMPLOYMENT AND TRAINING ADMIN., UNITED STATES DEP'T OF LABOR, COMPARISON OF STATE UNEMPLOYMENT INSURANCE LAWS, (October 1, 1979) [hereinafter cited as COMPARISON].

21. See DeVyver, Federal Standards in Unemployment Insurance, 8 VAND. L. REV. 411 (1955). Among the reasons proposed for enacting stronger federal standards are that state and local governments have failed to assume responsibility and to initiate action and that interstate competition fostered by variance among state laws creates unfair situations. States can accelerate this competition by changing laws to provide lower benefits, thereby lowering taxes to employers. Id.

22. LEGISLATIVE POLICY, supra note 12.

23. Id. at 55.

24. Id. at 56.

is currently attached to the labor force, the DOL recommendations recognize that the states should enact requirements that the claimant be both available and able to work.\textsuperscript{26}

The DOL recommendations recognize three principal reasons for a state to disqualify a claimant from unemployment benefits. First, an employee's disqualification may be justified if he voluntarily leaves without good cause. To promote mobility in the labor force and preserve the worker's incentive to improve his economic status, the recommendations permit the good cause requirement to be satisfied not only by work-related circumstances but by personal reasons as well.\textsuperscript{27} Second, discharge for misconduct constitutes a reason for disqualification. The DOL recommends that the misconduct be connected with the work, since the conduct of workers unrelated to the job should not affect their employment.\textsuperscript{28} Some states have enacted a more stringent disqualification provision where an employee is discharged for gross misconduct.\textsuperscript{29} The DOL recommendations suggest that this be limited to situations where a claimant is discharged for committing a criminal act and is tried and convicted by a court of law.\textsuperscript{30} Third, an individual may be disqualified for refusal to accept suitable work.\textsuperscript{31}

The DOL recommendations also set standards with respect to the length of disqualification. Under the federal recommendations, each state is to establish a fixed period of disqualification in its unemployment compensation statute.\textsuperscript{32} Since the purpose of disqualification is not to penalize the claimant but to limit the payment of benefits to the time he is unable to find suitable work, the length of the period should be limited to time that the claimant's own action continues to be the cause of his unemployment. For this reason, federal policy suggests that the period be fixed by statute to the average length of time an employable worker would spend finding suitable work in a normal labor market.\textsuperscript{33} Accordingly, DOL determined that an employable worker would take an average of six weeks to secure reemployment.\textsuperscript{34} If the disqualified claimant takes a longer time in finding

\textsuperscript{26} See Legislative Policy, supra note 12, at 57.
\textsuperscript{27} Id. at 62.
\textsuperscript{28} Id.
\textsuperscript{29} See Comparison, supra note 20, at 4-8 & 4-31 to 4-33.
\textsuperscript{30} Legislative Policy supra note 12, at 63.
\textsuperscript{31} In defining suitable work, the DOL considers the suitability of the work for the individual, not the individual for the job. Legislative Policy, supra note 12, at 64.
\textsuperscript{32} Id. at 65.
\textsuperscript{33} Id.
\textsuperscript{34} Id. For new data showing a longer period of 22 to 31 weeks, see Employment and Training Admin., United States Dep't of Labor, A Statistical Evaluation of the
a job, the reason for his unemployment is presumed not to be due to the actions that caused his disqualification but to economic circumstances in the labor market that are beyond his control. According to the DOL, the length of disqualification should be constant regardless of the reason for disqualification because it is difficult to determine whether a separation from employment is by reason of a quit or a discharge, and the factual situations in voluntary separations and refusal of suitable work are often identical.\textsuperscript{35}

A disqualification for an employee's participation in a labor dispute is treated differently from the three previous disqualifications because the labor dispute disqualification affects groups of workers rather than individuals and because the employment relationship is not severed. In a disqualification because of a labor dispute, the DOL recommends that the disqualification continue as long as the labor dispute causes a stoppage of the employer's work and should end either when the stoppage ends or when the stoppage ceases to be due to the labor dispute.\textsuperscript{36} The length of the active labor dispute should not be determinative of the disqualification period since it is inherently difficult to determine how long a labor dispute remains in active progress.\textsuperscript{37}

It is not necessary for the states to follow these federal standards precisely. Nevertheless, state legislators should keep the reasons underlying the DOL recommendations in mind when devising statutes. The need for uniform state laws is underscored by the mobility of the work force across state lines. Therefore, each state should take the initiative to conform its unemployment compensation system to the federal scheme.

\textbf{B. The District of Columbia Unemployment Compensation Act}

\textit{1. Administrative Procedures for Determination of Claims}

Section 11 of the District of Columbia Unemployment Compensation Act covers administrative procedures for the determination of unemployment compensation claims by District workers.\textsuperscript{38} When a District employee is terminated because of conditions that would disqualify a worker under section 10, his employer is required to file a separation report with the Bureau of Employment Security within forty-eight hours after the ter-

\begin{footnotesize}
\textsuperscript{35} Legislative Policy, \textit{supra} note 12, at 66.
\textsuperscript{36} \textit{Id.} at 70.
\textsuperscript{37} \textit{Id.}
\textsuperscript{38} D.C. Code § 46-311 (1973).
\end{footnotesize}
Unemployment Compensation Disqualification

39. After a claim is filed, a claims examiner promptly determines if the claim is payable. For payable claims, he decides when payments will begin, the maximum duration of benefits, and the weekly benefit amount. Notice of this initial determination must be provided to the claimant, his most recent employer, and all his base period employers. The claimant or any party may appeal the initial determination to an appeal tribunal within ten days.

The initial determination of the claims examiner is subsequently transmitted to an appeal tribunal that may modify the initial determination after providing notice to the parties. The decision of this appeal tribunal may be appealed to the Board within a ten-day period. It is critical that the appeal be filed within the ten-day period because judicial review will be precluded if administrative remedies are not exhausted. A decision of the Board may be appealed within thirty days to the District of Columbia Superior Court.

39. 18 D.C.R.R. § 204.3 (1970). If 25 or more workers are involved, a Mass Separation Report must be filed. Id. § 204.4. If a labor dispute is involved, a Notice of Unemployment Due to Strike or Labor Dispute must be filed. Id. § 204.5. An employer who fails to supply such reports will be presumed to have admitted that the worker is not subject to disqualification. Id. § 204.6.


42. D.C. Code § 46-311(b) (1973). The purpose of such a short appeal period is not to discourage appeals but to prevent unreasonable delays in the payment of benefits. See Atchison & Keller, Inc. v. District Unemployment Compensation Bd., 435 F.2d 411 (D.C. Cir. 1970). The claimant or any party aggrieved may first petition the claims examiner for a redetermination of the initial finding in lieu of the formal appeal procedure. The petition for redetermination, however, does not stop the running of the 10-day period for appeal. 18 D.C.R.R. § 302.2 (1970). The redetermination may also be appealed. Id.

43. The appeal tribunal consists of either one appeals examiner, employed by the Bureau, or a body composed of an examiner acting as chairman, one employee representative, and one employer representative. D.C. Code § 46-311(d) (1973).

44. Id. § 46-311(b). The appeal tribunal must provide a fair hearing for all parties. Id. § 46-311(e).

45. The decision of the appeal tribunal is final unless a petition for appeal to the Board is filed within 10 days from the mailing of the decision, or unless the Board takes action of its own within the 10-day period. Id. § 46-311(e). A timely appeal must be filed in order to obtain judicial review. See Malcolm Price, Inc. v. District Unemployment Compensation Bd., 350 A.2d 730 (D.C. 1976) (judicial review precluded even though decision was final because appeal not filed within a 10-day period). A petition for redetermination of the appeal tribunal decision may also be filed, but, as with the initial determination, this petition does not stop the running of the 10-day period. 18 D.C.R.R. § 303.7 (1970). This petition must be based on newly discovered evidence and be verified under oath. Id. § 303.7(b).


The District of Columbia Unemployment Compensation Act follows some, but not all of the DOL recommendations regarding disqualification provisions. Under the Act, to be eligible for unemployment compensation, a claimant must be both available for and able to work. The law is designed to provide compensation for individuals who are unemployed through no fault of their own. In addition, there is a legislative preference for compensation through employment rather than through welfare assistance.

a. Voluntary Leaving Without Good Cause

Under section 10(a) of the Act, an individual may be disqualified for leaving his most recent job voluntarily without good cause. After an initial waiting period of one week, one so disqualified is deprived of benefits for a period not less than six nor more than twelve weeks. Under the voluntary leaving section, each case is subject to a two-part inquiry.

47. Id. § 46-310. For example, the D.C. Act does not include the DOL recommendations for a fixed period of disqualification of six weeks. The disqualification for voluntary leaving and misconduct can be longer than that for failure to find suitable work, and the reduction of benefits is contrary to DOL recommendations. See notes 101-122 and accompanying text infra.


49. See note 1 and accompanying text supra.

50. See note 1 and accompanying text supra.

51. D.C. Code § 46-310(a) (Supp. VII 1980) reads as follows:

An individual who left his most recent work voluntarily without good cause connected with the work, as determined by the Board under regulations prescribed by it, shall not be eligible for benefits with respect to the week for which he first files for benefits and with respect to not less than six nor more than twelve consecutive weeks of unemployment which immediately follow such week. The length of the disqualification shall be determined by the Board under regulations prescribed by it, according to the seriousness of the case. In the event such leaving occurs when the individual has an unexpired benefit year, the disqualification shall commence with the week for which he reopens his claim. In addition, such individual's total benefit amount shall be reduced in a sum equal to the number of weeks of disqualification multiplied by his weekly benefit amount.

52. Id. The prior statute withheld benefits for a period of four to nine weeks. Some jurisdictions provide for variable periods, ranging up to 25 weeks in Texas and Colorado; others have a fixed period, the longest being 13 weeks; the rest disqualify the employee for the duration of his unemployment. See COMPARISON, supra note 20, at 4-7.

53. A regulation based upon the statute states:

In determining whether the leaving is such as to disqualify the individual for benefits for the time prescribed, it must appear that the leaving on his part was (1) voluntary in fact, within the ordinary meaning of that term, and (2) without good cause, in light of all such facts, conditions, and circumstances as are relevant to the
Bureau must determine, first, whether the termination was voluntary. For this threshold question, there is a presumption that the termination was involuntary.\textsuperscript{54} Second, if the Bureau determines that the employee left voluntarily, it must then decide whether the employee had good cause for leaving. The burden of proof is on the claimant to establish good cause.\textsuperscript{55} Under the Regulations, good cause depends upon the facts of each case, but will not depend solely on conditions connected with the employment.\textsuperscript{56}

As examples of what would not be good cause for voluntarily leaving employment, the regulations consider: refusal to obey reasonable rules and regulations; minor reduction in wages; transfer from one type of work to another which is reasonable and necessary; marriage or divorce resulting in a change of residence; general dissatisfaction with work; and vague prospects of other work deemed more desirable by the claimant.\textsuperscript{57}

A problem that frequently arises with respect to voluntary leaving is the "quit or be fired" situation, in which the employee learns from the employer that he will be terminated but resigns before the termination. This procedure can be advantageous for both the employee and employer. By agreeing to resign, the employee can have a poor work record erased, thereby increasing his chances for future employment. The employer can save time and money by avoiding a hearing to which an employee may be entitled.\textsuperscript{58} In Thomas v. District of Columbia Department of Labor\textsuperscript{59} and in Carpenter v. District Unemployment Compensation Board,\textsuperscript{60} the District of

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54. Id.
56. 18 D.C.R.R. § 301.1(a) (1970). This requirement may have been changed by the enactment of D.C. Law 2-129 (1979). See notes 114-115 and accompanying text infra.
57. 18 D.C.R.R. § 301.1(b) (1970).
59. 409 A.2d 164 (D.C. 1979)
60. 409 A.2d 175 (D.C. 1979). Courts do not discourage this practice.
\end{footnotesize}
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Columbia Court of Appeals recently considered the application of section 10(a) to this employment situation.

In *Thomas*, an employee learned from her supervisor that disciplinary action was going to be taken against her because of her poor work performance. The supervisor advised her that she could resign, adding that she could confer with her union representative. If she resigned, her employer would destroy her poor record. After contacting her union representative, the employee decided to resign. At her benefits interview with the claims examiner, the claimant stated that she was leaving for personal reasons, but the purpose stated on her separation form and on the form supplied to the Board by her employer was "to seek employment elsewhere." The claims examiner found that the claimant voluntarily left work for personal reasons without good cause. At her hearing before the appeals examiner, the claimant testified that she had had problems at home, but that she had in fact resigned under the threat of being fired. The appeals examiner therefore affirmed that she had left voluntarily without good cause.

On appeal, the claimant argued that her separation was involuntary as a constructive discharge because of the employer's threat of discharge. Under such circumstances, if the employee believes that firing is imminent, his leaving should be considered involuntary or, at least, voluntary with good cause. The District of Columbia Court of Appeals held that the evidence on the record was insufficient to rebut the presumption under section 10(a) that the leaving was involuntary. Therefore, the employee could not be disqualified under section 10(a) because the employer did not meet his burden of proof.

In *Carpenter*, the District of Columbia Court of Appeals again found the record describing an employee's termination to be insufficient to overcome the presumption of involuntary leaving. The evidence showed that the employee, when confronted with an ultimatum that refusal to resign would result in her discharge, had decided to resign. Therefore, as in *Thomas*, the Board had inconsistently applied a *per se* rule of involuntariness if the employee had foregone the right to a hearing. In *Thomas*, the court of appeals held this practice could not be continued. See *id.* at 172-73.

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61. Such an outcome was especially important to her because she looked forward to a future in government employment. *Id.* at 168.
62. *Id.*
63. *Id.* at 167.
64. *Id.* at 168.
65. *Id.* at 169.
66. *Id.* at 173-74.
67. *Id.* Prior to *Thomas*, the Board had inconsistently applied a *per se* rule of involuntariness if the employee had foregone the right to a hearing. In *Thomas*, the court of appeals held this practice could not be continued. See *id.* at 172-73.
68. 409 A.2d 175 (D.C. 1979).
Thomas, the court found that the employee could not be disqualified for voluntary leaving.69 This practice is common among employers, who prefer to avoid the burden of showing misconduct under section 10(b) as the reason for the employee's discharge.70 Under section 10(a), if the employee resigns, he bears the burden of showing good cause after the initial presumption of involuntary resignation is overcome.71

When a claimant’s reason for leaving employment is the relocation of the employer’s place of business, the voluntariness of leaving is also at issue. In National Geographic Society v. District Unemployment Compensation Board,72 the employer moved its offices from Washington, D.C. to Rockville, Maryland, a distance of nineteen miles. The employer offered the employees chartered bus transportation to the new location. Five employees refused to transfer because of the increased distance and time. The Board allowed benefits to each claimant with a finding that the leavings were involuntary but made no findings on the adequacy of the transportation.73 The United States Court of Appeals for the District of Columbia remanded, finding that the Board must also consider the adequacy of transportation, including the chartered bus service, when determining the good cause issue.74

b. Discharge for Misconduct

Even if an employee is involuntarily terminated from employment, he may still be disqualified from receiving benefits under section 10(b) of the Act if he had engaged in misconduct which brought about his termination.75 In contrast to section 10(a), the burden of proof under section 10(b)

69. Id. at 178.
70. See notes 75-76 and accompanying text infra.
71. See note 45 supra. See also 18 D.C.R.R. §§ 301.1(a) & 301.2(a) (1970).
73. This involved a good cause question concerning both voluntary leaving and refusal of suitable work. D.C. CODE § 46-310(a), (c) (1973). For a discussion of subsection (c), see notes 80-87 and accompanying text infra.
75. D.C. CODE § 46-310(b) (Supp. VII 1980) reads as follows: An individual who has been discharged for misconduct occurring in the course of his most recent work proved to the satisfaction of the Board shall not be eligible for benefits with respect to the week for which he first files for benefits and with respect to not less than six nor more than twelve consecutive weeks of unemployment which immediately follow such week. The length of the disqualification shall be determined by the Board under regulations prescribed by it, according to the seriousness of the case. In the event such a discharge occurs when the individual has
is on the party alleging the misconduct, usually the employer, but there is no presumption of involuntariness in the employee's favor in the absence of evidence of such misconduct. The section 10(b) disqualification period is the same as for section 10(a) — six-to-twelve weeks. Misconduct is illustrated in the regulations as: willing violation of employer's rules; intoxication; repeated disregard of reasonable orders; sabotage; gross neglect of duties and studied inefficiency; insubordination; and dishonesty. In most cases, however, the facts at issue are unique, and all evidence offered at the benefits hearing must be considered.

The general rule in a disqualification for misconduct case is that the employee's act must be in willful disregard of the employer's interest or a deliberate violation of the employer's rules. Misconduct may also consist of disregard of reasonable standards of behavior or extreme negligence.

c. Failure to Apply for or Accept Suitable Employment

Under section 10(c) of the Act, a claimant may also be disqualified for failure to apply for or accept suitable employment upon termination of his earlier employment status. A disqualification period under section 10(c) an unexpired benefit year, the disqualification shall commence with the week for which he reopens his claim. In addition, such individual's total benefit amount shall be reduced in a sum equal to the number of weeks of disqualification multiplied by his weekly benefit amount.

76. Id. About half the states have similar varying penalties, ranging from two to six weeks in Alabama, to five to twenty-six weeks in South Carolina. Many states have a flat disqualification period and some disqualify for the duration of unemployment or longer. See COMPARISON, supra note 14, at 4-8. Some states provide for a longer disqualification period for gross misconduct, which can include a felony, assault, theft, sabotage, or embezzlement. Id.

77. 18 D.C.R.R. § 301.2(b) (1970).


80. D.C. CODE § 46-310(c) (1973) reads:

If any individual otherwise eligible for benefits fails, without good cause as determined by the Board under regulations prescribed by it, either to apply for new work found by the Board to be suitable when notified by an employment office or to accept any suitable work when offered to him by any employment office, his union hiring hall, or any employer direct, he shall not be eligible for benefits with
may range from four to nine weeks. The statute sets out criteria for the Bureau to determine whether the work is suitable: the physical fitness and prior training, experience, and earnings of the individual; the distance of the place of work from the individual’s residence; and the risk involved as to health, safety, and morals.\textsuperscript{81} Using these general standards, the Bureau considers not only whether the work is suitable but also whether the claimant had good cause for failing to accept suitable work.\textsuperscript{82} In this inquiry, the Bureau has substantial discretion in determining what is suitable employment for the individual.\textsuperscript{83} Specifically rejected as good cause under the regulations are: slight difference in wages or hours of work; difference in locality where transportation facilities are adequate and economical; temporary physical disability which does not substantially interfere with ability to work; and general or personal objections to employer or to fellow employees.\textsuperscript{84}

A failure to accept suitable work is often found in conjunction with a voluntary leaving. In \textit{National Geographic Society},\textsuperscript{85} the District of Columbia Circuit held that the Board must provide findings on the adequacy respect to the week in which such failure occurred and with respect to not less than four nor more than nine consecutive weeks of unemployment which immediately follow such week, as determined by the Board in such case according to the seriousness of the refusal. In addition such individual’s total benefit amount shall be reduced in a sum equal to the number of weeks of disqualification multiplied by the weekly benefit amount. In determining whether or not work is suitable within the meaning of this subsection the Board shall consider (1) the physical fitness and prior training, experience and earnings of the individual, (2) the distance of the place of work from the individual’s place of residence, and (3) the risk involved as to health, safety, or morals.

\textsuperscript{81} See note 80 supra for the full text of D.C. CODE § 46-310(c) (1973).
\textsuperscript{82} 18 D.C.R.R. § 301.3(a) (1970). Other jurisdictions have held that a skilled worker generally does not have to accept a job at a lower position. See Pacific Mills v. Director of Division of Employment Sec., 322 Mass. 345, 77 N.E.2d 413 (1948) (employee, trained for office work at a business college, refused job as a shipping clerk; not required to work even though pay was the same). But see \textit{In re Heater}, 270 App. Div. 311, 313, 59 N.Y.S.2d 793, 795 (1946) (statute precluded finding that refusal of position on grounds that it involved lower degree of skill was good cause). Often the extent of this prior training corresponds to the worker’s level of prior earnings because workers with lesser skills are usually paid lower wages. Therefore an employee may generally refuse to work for a salary substantially less than what he had previously received. Nevertheless, after a considerable length of time has passed and the claimant is still unemployed, work at lower pay may become suitable. See \textit{In re Johnson}, 409 A.2d 1073 (D.C. 1979); Hallahan v. Riley, 94 N.H. 48, 45 A.2d 886, 888 (1946).

\textsuperscript{83} See 18 D.C.R.R. § 301.3(a) (1970). These Regulations state that the Board may adopt such further or additional standards as it believes will insure a reasonable determination. \textit{Id.}

\textsuperscript{84} 18 D.C.R.R. § 301.3(b) (1970).
\textsuperscript{85} 438 F.2d 154 (D.C. Cir. 1970).
of transportation before it can decide that the employee justifiably refused to work at the employer's new location.\textsuperscript{86} In this determination, the distance of the place of work from the employee's place of residence is a relevant consideration.\textsuperscript{87}

d. Labor Disputes

An additional disqualification provision, section 10(f), prevents one who is unemployed as a direct result of a labor dispute still in active progress from receiving benefits.\textsuperscript{88} This disqualification does not apply, however, if the employee is not participating or directly interested in the dispute and if he does not belong to a grade or class of workers who are participants in the dispute.\textsuperscript{89}

The statutory provision for a labor dispute in active progress has been broadly defined by the District of Columbia Court of Appeals. In\textit{National Broadcasting Corp. v. District Unemployment Compensation Board,}\textsuperscript{90} the employer, NBC, refused to accept striking employees' offers to return to work. The union and the employees argued that NBC was engaging in a lockout and that the employees should be entitled to benefits because the dispute was no longer in active progress.\textsuperscript{91} NBC argued that any lockout is a labor dispute. The District of Columbia Court of Appeals refused to accept either position. The court classified the situation as a continuing labor dispute and stated that claimants involved in it could not convert that dispute into a situation of involuntary unemployment merely by offering to return to work.\textsuperscript{92} In\textit{Washington Post Co. v. District Unemployment Compensation Board,}\textsuperscript{93} the District of Columbia Court of Appeals extended the labor dispute disqualification to include alleged violations of a collective bargaining agreement. The union had adopted the practice of dispatching only a small number of senior workers for work. When this forced the Post to pay these workers overtime, the Post asserted that the union was abusing the terms of its collective bargaining agreement. The employees, who were consequently laid off, contended that they were discharged for economic reasons. Although the Board accepted the employees' argument, the court ruled that the employees' refusal to work was

\textsuperscript{86} Id. at 158.
\textsuperscript{87} See note 80 supra.
\textsuperscript{89} Id.
\textsuperscript{90} 380 A.2d 998 (D.C. 1977).
\textsuperscript{91} At this time, the District of Columbia lockout exception, added by D.C. Law 2-129 \S\ (aa) (1979) (codified at D.C. Code \S\ 46-310(f) (Supp. VII 1980)) was not in effect.
\textsuperscript{92} 380 A.2d at 1000.
\textsuperscript{93} 377 A.2d 436 (D.C. 1977).
based on a labor dispute over the terms of an employment contract. The court defined a labor dispute as any controversy concerning wages, hours, working conditions, or terms of the employment arising out of the interests of an employer and employee. The pressmen, therefore, were disqualified from receiving unemployment compensation under section 10(f) of the Act.

e. Other Disqualifications

In addition to the four preceding principal disqualifications, a claimant who fails to attend a recommended training or retraining course without good cause is disqualified for benefits under section 10(e). This disqualification applies only to the week in which the failure occurred. Additionally, an individual is disqualified under section 10(g) for any week during which he receives unemployment compensation from any other state or from the United States. Finally, any person who knowingly makes a false statement or representation in order to obtain or increase any benefit may be disqualified under section 10(e) for all or part of his benefit year and for one year subsequent to his benefit year.

The unemployment compensation system in the District of Columbia has, therefore, never been in full conformity with the DOL recommendations. Nevertheless, the disqualification provisions in the District are less severe than in other states. An effort to establish stricter disqualification provisions was made in 1978 with the introduction and subsequent passage of a bill to amend the District of Columbia Unemployment Compensation Act.

II. STRICTER DISQUALIFICATION REQUIREMENTS: THE DISTRICT OF COLUMBIA UNEMPLOYMENT COMPENSATION ACT AMENDMENTS OF 1978

The District of Columbia Unemployment Compensation Act Amend-

95. Id. at 440.
97. Id. § 46-310(g).
98. Id. § 46-319(e). The same penalty is imposed for a material omission of fact.
99. Thirty-two states disqualify a claimant for the duration of his unemployment if he voluntarily left employment without good cause. For misconduct or refusal of suitable work, 20 states disqualify a claimant for the duration of his unemployment. See Comparison, supra note 20, at 4-27 to 4-39.
ments of 1978 modified both the nature of the disqualification requirements and their duration under the District unemployment compensation plan. The effects of the Amendments are 1) to increase the period of disqualification for voluntary leaving without good cause and discharge for misconduct from the former four-to-nine week period to six-to-twelve weeks; 2) to limit the good cause requirement for voluntary leaving to good cause "connected with work;" 3) to exempt lockouts from the labor dispute disqualification; and 4) to reduce benefits by ten percent to those who have been disqualified for voluntary leaving without good cause and to those disqualified for misconduct. The last provision, section 10(i) of the Act, operates only after two conditions are satisfied. First, in the

102. D.C. Code § 46-310 (Supp. VII 1980). These provisions were not in the original bill when reported out of committee. See D.C. Bill 2-209 (1978). As originally adopted by the Employment and Economic Development Committee, the bill provided for an indefinite disqualification period for voluntary leaving and for gross misconduct. The Committee's motive for making these changes was to achieve solvency of the District of Columbia Unemployment Trust Fund by reducing the number of eligible persons, thus lowering the amount paid out. At that time, the fund was indebted to the federal government in the amount of $64 million. Estimates showed that the change for voluntary leaving would save $8 million, and the addition of the gross misconduct provision would save $1 million per year. See Committee on Employment and Economic Development, Legislative Report for Bill 2-209, 32-33 (1978).

At the first reading of the bill, the only change from the prior statute provided that good cause for voluntary leaving must be "connected with the work." After adopting this change, the City Council could not agree on the gross misconduct provision and decided to give the bill further study. Representatives of management and labor were consulted to work out a compromise. The Central Labor Council represented labor interests; the Washington Board of Trade represented management. The resulting compromise eliminated the gross misconduct provision and instituted a six to twelve week disqualification period for voluntary leaving without good cause and discharge for misconduct. See D.C. Council Meeting Transcript, Second Amended First Reading on Bill 2-209, 27-28 (June 27, 1978).

105. The new subsection (i) reads in pertinent part:
Notwithstanding the provisions of section 7 of this Act, all benefits payable to an individual subsequent to any disqualification period under the provisions of sections 10(a) or 10(b) of this Act, with respect to an initial claim which becomes effective during a calendar year beginning after December 31, 1979, shall be reduced by an amount equal to ten per centum (10%) of the amount to which the individual would otherwise be entitled, rounded to the next lower multiple of one dollar: Provided, (1) that the total amount of benefits paid during the twelve month period ending June 30 of the preceding year exceeds the total amount of contributions and interest paid into the fund during the same period, as determined by the Board by September 30 of 1979 and of each succeeding year; and (2) that the Board so certified to the Council of the District of Columbia and that during the forty-five day period . . . the Council does not adopt a resolution disapproving the lower payments authorized by this subsection.
prior year ending June 30, benefits paid out of the fund must have exceeded contributions and interest paid into the fund. Second, the City Council must not have disapproved the lower payments within forty-five days after receiving the certification of the Bureau.106

By extending the disqualification period for voluntary leaving and misconduct from four-to-nine weeks to six-to-twelve weeks,107 the Act brings the District program in line with the average time it takes to find a job in a normal market.108 Recent statistics demonstrate that the time an employable worker spends searching for a job ranges from twenty-two to thirty-one weeks.109 The former four-to-nine week period, therefore, may not discourage a worker from withdrawing from the labor force and remaining unemployed if his discharge has been self-provoked. The six-week period recommended by DOL also falls short of providing a genuine incentive to work under normal market conditions. Thus, by increasing the disqualification period, the District's amended statute is more likely to achieve the federal objective of relating the disqualification period to the length of time a worker spends securing reemployment.110

In contrast to this change in section 10(a), the four-to-nine week disqualification period imposed by section 10(c) on a claimant who fails to apply for or accept suitable work remains unchanged.111 Since factual situations are often similar under sections 10(a) and 10(c),112 and claimants subject to either section face similar work incentives, there is no obvious reason for extending the period under only one of these sections. Extending the section 10(c) disqualification period to six-to-twelve weeks to conform with the change in section 10(a) would have been consistent with the DOL recommendation that such disqualification periods be identical.113

The added requirement under section 10(a) that good cause for voluntary leaving be "connected with the work" may create problems in interpretation. For example, there is no legislative history to the Amendments


106. This provision, coupled with the change in §§ 10(a), (b) is estimated to save the fund $6 million. See D.C. City Council Meeting Transcript, Second Amended First Reading on Bill 2-209, 31-32 (June 27, 1978).


108. According to DOL, the period of the disqualification should be rationally related to the length of time a job search should take. See notes 32-33 and accompanying text supra.


110. See note 33 and accompanying text supra.

111. D.C. Code § 46-310(c) (1973 & Supp. VII 1980). The legislative history of the amendments gives no evidence why the § 10(c) period was not increased.


113. See note 35 and accompanying text supra.
explaining how a good cause requirement might be fulfilled. Moreover, the provision is in conflict with the District of Columbia Regulations stating that the cause of unemployment need not be related solely to the job, but may also be based on "good personal cause." Because of this conflict, if the employee becomes unable to carry out his duties at work because of family obligations or temporary sickness, it is unclear whether those reasons would now be classified as "connected with work." It remains to be seen how the clause added to section 10(a) will be interpreted. Since the Bureau now has regulatory authority, it should amend the regulations to conform with the statutory requirement.

The amendments also substantively changed the definition of a labor dispute with regard to a disqualification brought under section 10(f). In *National Broadcasting Corp.*, the court rejected the employer's argument that a lockout be considered a labor dispute. By providing an express exception for a lockout, the amendments align section 10(f) with recent judicial construction of this section. However, it remains unclear when a dispute is "still in active progress" for purposes of determining the duration of a disqualification. This depends on whether the disqualification ends when the work stoppage actually ceases or simply when the stoppage ceases to be due to a labor dispute. Section 10(f) should be clarified to show that either situation will cause the disqualification period to end.

The reduction in benefits for those disqualified for voluntary leaving or misconduct is also still at odds with the DOL recommendations suggesting that the unemployed worker should have maximum benefits to enable him to search more adequately for new employment. This reduction was offered to decrease the amount paid out of the unemployment compensation fund to achieve solvency and thus reduce the District's indebtedness to the federal government. The Act also incorporates a solvency tax on employers' accounts. Therefore, even though the provision decreases the benefits of some claimants, it consequently places a heavy tax burden on employers. Since the maximum weekly benefit amount under the District's plan is the highest in the nation, a ten percent reduction in bene-

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114. 18 D.C.R.R. § 301.1(a) (1970). For the text of this regulation see note 53 *supra*.
115. This authority is granted to the Bureau through D.C. CODE § 46-313(a) (Supp. VII 1980).
117. 380 A.2d 998 (D.C. 1977). For a discussion of this case, see notes 90-92 and accompanying text *supra*.
118. See notes 36-37 and accompanying text *supra*.
120. See EMPLOYMENT AND TRAINING ADMIN. DEP'T OF LABOR, SUMMARY TABLES,
fits would therefore still allow the unemployed worker relatively high benefits. Finally, recent data has shown that individuals who are disqualified for the duration of their unemployment are more likely to find work sooner than those who are not disqualified. A claimant's knowledge that his benefits will be reduced may prompt him to search more diligently for new employment. Thus, fewer individuals may receive unemployment benefits which could replenish the unemployment fund. The reduction is therefore consistent with the objective of any unemployment compensation plan — encouraging compensation through employment rather than through welfare.

IV. CONCLUSION

Claimants applying for unemployment compensation may be disqualified for several reasons under the District of Columbia Unemployment Compensation Act. Although the Act is not in full compliance with federal recommendations, it is consistent with the general purpose of unemployment compensation — to provide benefits to individuals who are unemployed through no fault of their own.

With the enactment of the District of Columbia Unemployment Compensation Act Amendments of 1978, the City Council has recognized the need for stricter controls on the payment of benefits by increasing the length of the disqualification period and by reducing benefits for voluntary leaving without good cause and discharge for misconduct. Although these changes are partially inconsistent with the federal scheme, they are a positive step in reducing the District's indebtedness to the federal government.

Thomas Marks Goss

32-33 (1978), which shows that the average weekly wage in the District of Columbia is $139.00.

121. See STATISTICAL EVALUATION, supra note 34, at 101-03.
122. See note 42 and accompanying text supra.
123. See note 1 supra.