

SEASONAL WORKERS UNDER THE MISSISSIPPI UNEMPLOYMENT COMPENSATION LAW

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During 1938 two States, Mississippi and Oregon, found it desirable to designate certain industries as seasonal in accordance with the provisions in their laws which permit restriction of the benefit rights of seasonal workers. Considerable interest in the procedures adopted has been expressed by administrators in other States. This article summarizes the basic objectives and achievements of the Mississippi regulations as they are viewed by the State administrators. The judgments expressed are entirely those of the author. The Social Security Board hopes to publish further analyses of the effect of seasonal regulations in particular States as well as summaries of studies made in States where special seasonal regulations have been judged unnecessary.

The experience of the Mississippi Unemployment Compensation Commission with the problem of seasonality is noteworthy in two respects. In the first place, the procedure for the special treatment of claims resulting from seasonal unemployment has been in operation, without major changes, from the beginning of benefit payments in April 1938 until the present time. Secondly, unlike Oregon, the only other State which has had considerable experience with seasonal regulations, Mississippi designates seasonal periods for entire industries rather than for individual employers.

Measurement of Seasonal Declines

Mississippi has four industries with wide employment fluctuations which are correlated with the annual cotton season. These are cottonseed-oil mills, cotton compresses and warehouses, cotton gins, and fertilizer plants. Another important seasonal industry is the shrimp- and oyster-canning industry located on the Gulf Coast. It appeared from analysis of the employment records and the operating practices of these industries that approximately 10,000 workers are customarily hired during the busiest season and laid off later in the year. In the fish-canning industry approximately 4,000 workers are hired during the season, and employment drops virtually to zero at the close of the operating period. In the other four industries a substantial amount of employment continues throughout each year, but marked seasonal fluctuations occur. To illustrate the conditions in one industry, the number of workers employed in cottonseed-oil mills during the midweek of each

month in 4 recent years is shown in table 1. Since, undoubtedly, a considerable proportion of the workers in these industries do not ordinarily find other employment in the off season, some limitation on the benefit payments to these workers dur-

Table 1.—Number of employees in the cottonseed-oil industry of Mississippi, by months, 1931, 1935-37¹

Month	1931	1935	1936	1937
January.....	2,362	2,159	2,427	2,850
February.....	1,836	2,054	1,880	2,978
March.....	1,220	2,048	1,815	2,720
April.....	910	1,313	1,470	2,234
May.....	723	1,366	1,000	1,770
June.....	611	1,442	1,178	1,790
July.....	538	1,131	1,331	1,654
August.....	1,100	1,815	1,448	1,724
September.....	2,818	3,003	3,537	4,209
October.....	3,040	3,027	3,770	3,908
November.....	2,874	2,810	3,111	3,487
December.....	2,037	2,307	2,903	3,238

¹ Figures are for the calendar week which includes the 15th of the month in 1931 and for the calendar week ending nearest the 15th of the month in other years.

Source: Data for 1931 and 1935 are from *Biennial Census of Manufactures*. Data for 1936 and 1937 are from contribution reports received from employers by the Mississippi Unemployment Commission with interpolations where data are incomplete.

ing the off season appeared necessary to avoid a heavy drain upon the State's unemployment fund. Moreover, it seemed likely that the task of disqualifying individual seasonal claimants who failed to return to their customary self-employment on farms and elsewhere would involve excessive administrative expenses and complications of procedure. The Commission therefore decided to limit the benefits payable to all seasonal workers in these five industries.

Reasons for Prompt Action

When the issue was under consideration early in 1938, the Mississippi Commission thought seriously of following the more general practice of delaying action until further facts and experi-

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ence could be accumulated. The decision to put a special seasonal rule into effect on the first day of claims taking was prompted by the following considerations:

1. The available data, though far less complete than might have been desired, were considered sufficient to justify immediate action.

2. The seasonal nature of the five industries is a well known characteristic of the State's industrial structure, and the regularly recurring active periods of each industry are generally recognized. The consistency of an insurance program which does not pay benefits in the off-season periods of these industries is easily explained and readily appreciated. The inconsistency of paying benefits in off-season periods would be readily detected and difficult to explain, and might detract from the prestige of unemployment compensation.

3. It was felt that, if ever a procedure was to be adopted which would deny benefits to workers on account of the seasonal nature of their employment, there were strong administrative reasons for putting such procedure into operation as early as possible. It would be confusing and demoralizing to workers who had become accustomed to receiving benefits under certain conditions, if later, through a reversal of public policy, they should be denied benefits under the same conditions.

4. Most European countries have considered it necessary to adopt some method of restricting or denying benefits to workers in periods of the year when they are customarily unemployed.

5. In addition to its value from the standpoint of the State, a special seasonal procedure may have value as an experiment from the standpoint of the Nation.

Defining the Operating Seasons

The Commission, therefore, under authority provided in the Mississippi Unemployment Compensation Law, adopted general rules which define a seasonal industry as one in which it is found that employment displays a regularly recurring tendency at some time of the year to decline to as little as 50 percent of the year's peak and to remain at or below that level for as many as 2 months. To define the operating season—or "normal active period"—of an industry, the Commission studies the amount of employment in the industry throughout a number of "experience years." In

making the first determinations only 2 experience years could be employed; ultimately 5 such years will be employed. A simple computation gives the "average date" on which the total number of employees dropped to as low as 50 percent of

Table 2.—*Employment, by months, in the cottonseed-oil industry in Mississippi expressed as a percentage of the peak month in each year, 1931, 1935-37*

Month	1931	1935	1936	1937
January.....	77.7	69.8	64.2	65.8
February.....	60.4	60.4	49.9	69.7
March.....	40.1	67.5	48.0	63.7
April.....	31.2	43.4	39.0	62.8
May.....	23.8	44.2	28.8	41.8
June.....	20.1	40.0	31.1	41.9
July.....	17.7	36.6	35.2	38.7
August.....	39.1	49.0	38.8	40.4
September.....	82.6	100.0	93.6	100.0
October.....	100.0	97.9	100.0	91.8
November.....	94.5	84.7	82.8	81.7
December.....	86.7	77.5	70.2	76.8

the peak and the "average date" on which it again rose above that level. The operating period is then considered to begin with the latest first day or 16th day of a month immediately preceding the average date on which employment rose above 50 percent, and to end with the earliest 15th day or last day of a month immediately following the average date on which employment dropped to 50 percent.

For processing claims arising from unemployment during the calendar year 1938, the Commission defined the following industries as seasonal and adopted the periods indicated as the "normal active periods" of these industries:

Industry	Normal active period
1. Cotton gins.....	August 1-December 15.
2. Cottonseed-oil mills.....	January 1-April 30, and August 16-December 31.
3. Fish-packing plants.....	January 1-April 30, and August 16-December 31.
4. Cotton compresses and warehouses.	January 1-January 15, and September 1-December 31.
5. Fertilizer plants.....	January 1-April 30.
6. Educational institutions..	January 1-May 31, and September 1-December 31.
7. Baseball clubs.....	April 10-September 15.

The regulations provide that before the beginning of each calendar year the Commission shall make new computations, with possible changes in the industries treated as seasonal and in the operating seasons adopted. This procedure may be altered in the near future so that the determina-

tions will be made before the beginning of each operating period instead of each calendar year.

Theory Underlying the Method

It is clear that the Commission's intention is to exclude from benefits only that unemployment which occurs with marked regularity year after year and can, therefore, be confidently expected in advance. This quality of regular recurrence is possessed only by seasonal forces, as distinct from cyclical, secular, technological, fortuitous, or any other forces causing fluctuations in economic phenomena. If, in determining the operating season, the records of a single year were relied upon, the normal active periods arrived at might result from any combination of forces. In averaging the experience of a number of years, the Commission employs an accepted method of distinguishing seasonal from cyclical, secular, and other variations.

The experience now being used, it is recognized, is too brief for valid results in all cases. When the Commission has sufficient evidence to prove that the normal active period, as determined, varies from the average experience of the past 4 or 5 years, it will allow variations from the procedure described above in order to secure the best approximation to the true "normal."

The fact that a current operating season is particularly long or short will by no means discount the validity of the normal active period computed from the experience of several past years. A shorter operating season than usual reflects forces that are not seasonal in nature, are not subject to confident prediction, and are not properly exempted from unemployment compensation. The current seasons of the oil mills, compresses, and gins are proving shorter than the average seasons of recent years, and as a result the State is paying considerable amounts of benefits in these industries. The circumstance causing these shorter seasons—namely, a smaller cotton crop than usual—is one against which workers should be insured.

In adopting the industry, rather than the employer or the employee, as the unit in terms of which normal active periods are defined, the Commission was aware of certain objections. The chief of these is that some employers and employees whose activities are truly seasonal in

nature are exempted from the special treatment. The objective in view, however, was merely to provide special treatment for those industries which have a very pronounced degree of seasonality, since the greater part, or at least a very substantial part, of the entire problem seemed to be concentrated in these few industries.

In Mississippi the highly seasonal industries appeared to be reasonably easy to define in a manner which would appeal to the reason and common sense of all parties concerned. Little or no difficulty has been encountered in determining whether a given employer should or should not be classified in a seasonal industry. Moreover, in the Commission's experience to date, no major objections have arisen to the procedure of establishing one period of time to be regarded as the normal active period of an entire industry. Geographical differences cause some variations among individual employers, but these have not been found sufficient to justify setting up two or more seasons within any single industry. Certain other differences—managerial policy, for example—are not regarded as a proper cause for giving special treatment to individual employers.

The Benefit Rights of Seasonal Workers and Handling of Claims

Except for workers whose occupations are determined to be nonsessional in nature (discussed below), the following rule is in effect: *Benefits based on (i. e., chargeable to) wage credits earned in seasonal industries can be paid only for weeks of unemployment which occur within, or some part of which occurs within, the normal active period of the industry.*

If a claim is received from an individual whose entire wage credits (for earnings in the first 8 of the last 9 completed calendar quarters) were earned in a seasonal industry, the treatment given the claim depends upon the time of the year in which the first compensable week occurs. If it occurs within the normal active period the claim is allowed, but benefits are terminated at the end of the period, and the claimant is informed that he should file another claim when the next normal active period begins, if he is still unemployed at that time. If the first compensable week occurs outside the normal active period, the claim is disallowed and the claimant is informed that he may file another claim at the beginning of the next normal active period if he is then unemployed.

The situation is more complicated when a claimant has wage credits earned from two or more employers and arising from employment in both a seasonal and a nonseasonal industry.

In calculating the claimant's weekly benefit amount or his eligibility for benefits, no special treatment is given to seasonal wage credits. For these purposes all wage credits are taken into consideration. The weekly benefit amount remains the same throughout a benefit year whether payments are charged to seasonal or to nonseasonal wage credits.

In calculating the duration of benefits, however, seasonal wage credits are segregated. Claimants with both seasonal and nonseasonal wage credits may receive benefits chargeable to either type of wage credits during the normal active period of the seasonal industry but only the benefits chargeable to the nonseasonal wage credits during the dormant period of the seasonal industry. During the normal active period, any uncharged seasonal wage credits which the claimant may have are charged before the nonseasonal, even though the nonseasonal wage credits may have been earned first; otherwise it would be possible for a claimant to exhaust his nonseasonal wage credits during the active period and to enter the dormant period with no wage credits left except seasonal credits, to which benefits could not be charged. Moreover, if a claimant has wage credits in two or more seasonal industries, the wage credits charged first are those earned in the industry whose normal active period ends first, even though such wage credits were not the first which the claimant earned during his base period.

Nonseasonal Occupations

Under the Mississippi law, supplemented by general rules of the Commission, wage credits earned in a seasonal industry are not subject to the special treatment described above if (1) the wage credits were earned in an occupation in which employment normally continues for substantially all the year, or (2) the wage credits were earned in some occupation, such as special construction work, which does not partake of the seasonal nature of the industry.

Each initial claim must show the name and code number of the worker's occupation in his last substantial employment. The Commission is gradually accumulating from its own experience,

supplemented by other sources, a body of information regarding the nature of occupations in seasonal industries which enables the examiners to recognize certain occupations as nonseasonal. If examination of the claimant's wage record substantiates the supposition that his work has been of a nonseasonal nature, the examiner on his own initiative may exempt the claimant from special seasonal treatment. Occasionally the examiner on his own initiative may send the employer an inquiry on a special form regarding the nature of the claimant's occupation. In many cases, however, the examiner has no information about the claimant's occupation in the seasonal industry in which he was employed, if this was not his last substantial employment.

Chief reliance is therefore placed upon another approach to the problem. When a claim is disallowed or terminated through the operation of the special seasonal procedure, the claimant is informed that such action will be revoked if it is established that his employment was in a nonseasonal occupation. He may then file an application for reconsideration, and the Commission will inquire of his former employer as to the seasonal character of his work and will check the employer's answer against the claimant's wage record. If this investigation shows the claimant's occupation to have been nonseasonal, his claim is so handled, and the wage credits acquired in the seasonal industry may be charged with benefits at any time of the year.

Conclusions

The Mississippi procedure for special treatment of claims arising from seasonal unemployment has now been in operation almost a year. Experience proves that, in this State, the plan is administratively feasible. No concerted or forceful objections have been raised by employers, employees, or the public. An estimate of the amount saved for the State's fund cannot yet be made, but the average annual sum is likely to prove substantial.

The chief obstacles which have arisen in the actual operation of the procedure are as follows:

1. The administrative task is complicated and difficult in the initial stages. The difficulties are gradually being reduced, however, and it might now be argued that the administrative expenses eliminated by the system are as great as the administrative expenses added. The system does

remove the necessity for processing a great many initial and continued claims and for investigating numerous cases in which claimants may have failed to return to customary self-employment.

2. A certain inequity of treatment arises in the case of seasonal workers whose employment in a seasonal industry normally extends beyond the limits of the normal active period but who do not work throughout substantially all the year, since they are allowed benefits only for unemployment occurring within the normal active period. Under present procedures in Mississippi, it is impossible to segregate wages earned within the normal active period from those earned outside it; all wage credits earned by one individual in one

industry ordinarily must be counted as either seasonal or nonseasonal.

3. It may prove impossible to reconcile this system with the theory and practice of merit rating. If an employer's contribution rate is affected by the amount of benefit payments which have been charged to his account, the employers in the industries which receive special seasonal treatment will have a material and inequitable advantage as compared with employers in industries which have a seasonal variation of insufficient magnitude to bring them within the Commission's definition of a seasonal industry—the ice and the milk-products industries, for example. A workable solution of this difficulty is yet to be found.