

Comparison of (Un)employment Insurance Laws in Wisconsin and Korea

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I. Introduction

Over the last several decades, Korea has experienced dramatic changes to transfer from the traditional agrarian economy, in particular, the period of colonial development and destruction during the Korean War (1950-53), to Korea's remarkable economic development by industrialization based on the export of manufactures of the last quarter century. In the course of rapid economic development after the Korean War,

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industrial accidents have increased alongside industrial growth. Actions of the International Monetary Fund (IMF) in South Korea in the wake of the 1997-98 East Asian financial crisis had a detrimental effect not only economically, but socially and culturally as well. Because the actions of the IMF resulted in mass layoffs, bank closures, high interest rates and the sudden opening of Korean markets to foreign businesses,¹ A huge number of workers lost jobs leaving many to wander the streets, occasionally causing family relationships to be destroyed.

The Employment Insurance Act of 1993 played a role to help unemployed workers. However, much more needs to be done to improve the living conditions of the working class. Unemployment insurance is concerned with continuation of income during periods when the individual is without work, because the individual has lost his or her job and has not yet been able to find new employment.² In addition, the program may provide education and retraining where necessary if the employee is to secure eventual reemployment (either because the extent of the injuries make the employee unable to continue doing the kind of work s/he had done previously, or because the employee's job skills are inadequate to maintain stable employment). And finally the Workers' Compensation (WC) and UI programs are closely connected in that these two programs share a common objective of income replacement. Because individuals who suffer a permanent partial disability often experience long periods of unemployment when it becomes clear that they will be unable to return to their previous type of employment.

Since the Employment Insurance system in South Korea is relatively new (enacted only in 1993), I was eager to see how the U.S., and Wisconsin in particular, has dealt with the delivery of effective UI benefits. The comparison of the two UI systems is limited to a comparison of Unemployment Insurance (UI) beneficiaries; the funding of benefit protection; and income replacement.

The purpose of my study, therefore, is to compare the similarities and differences

¹ See generally <http://www.wsos.org/news/1998/apr1998/kor-a03.shtml> (Unemployment in South Korea hit a 33-year high earlier in 1998, with the official rate hitting 8.2 %).

² Note that the term "unemployment insurance" or "UI" refers to both Wisconsin's Unemployment Insurance Act and Korea's Employment Insurance Act unless otherwise indicated.

between the Korean and Wisconsin UI systems, and to evaluate their different strengths and weaknesses. By doing so I will be able to identify changes which would improve and strengthen both systems.

II. Similarities and Difference in Employment /Unemployment Insurance Laws in Wisconsin and Korea

Overview: Wisconsin has been authorizing payments since 1931 for unemployed workers who have lost a job through no fault of their own.³ The purpose of unemployment payments is to provide the unemployed worker with continuing income while he or she finds new employment. Wisconsin Statutes Chapter 108 provides for unemployment insurance (UI) benefits over a limited period of time for eligible employees whose unemployment is not the result of voluntary termination or dismissal for misconduct.⁴ Benefit rates are based on the employee's previous earnings and are paid for up to 26 weeks (182 days). Funding for UI comes from employment taxes paid by both the employee and the employer⁵ (unlike WC, which is paid for exclusively by the employer as part of the cost of doing business, as an insurance premium). UI benefits are regulated by the federal Social Security Act of 1935.⁶

³ Se LRB-98-WB-6

⁴ SeWis. Sta §108.04

⁵ SeWis. StaCh.108. Employers are subject to UI tax liability if they pay \$1,500 or more in wages in any calendar quarter or have full or part-time employees working for them in 20 weeks or more during a calendar year. An employer engaged in agriculture is subject to UI tax liability only if 10 or more persons are working in farm labor on the same day in 20 or more weeks during a calendar year or if the payroll for this work is at least \$20,000 in any calendar quarter. An employer of persons working in domestic service is subject to UI tax liability if the wages for this work are \$1,000 or more in any calendar quarter. A nonprofit organization which is classified at 501(c) (3) by the Internal Revenue Service is subject to UI tax liability if it has four or more employees on the same day in 20 weeks within a calendar year.

⁶ Se 26 U.S.C. §§ 3301-3311. Taxes paid to a state with an approved UI system are credited against the employer's federal tax liability.

Much of the federal program is implemented through the Federal Unemployment Tax Act (FUTA), which applies to most private employers, state and local governments, and nonprofit organizations.⁷

In Korea, the Employment Insurance Act (EIA) was enacted on December 27, 1993.⁸ The purpose of unemployment benefits in Korea is to stabilize the lives of the unemployed and their families for a specified period of time and to help the unemployed find new jobs.⁹ Specifically, the Employment Insurance System was enacted to support the constitutional right to work, to stabilize employment and to develop job capacity.¹⁰ Unemployment benefits are paid for 90 to 240 days based on the worker's contribution period and age.¹¹ Unemployment benefits also include, in addition to replacement income, job-seeking benefits and employment promotion allowances. The employment promotion allowances consist of early re-employment allowances, vocational competency development allowances, wide-area job seeking allowances, and moving allowances.¹² Early re-employment allowances are paid when the eligible person for job seeking benefits is reemployed with a stable job or

⁷ *Seid.*

⁸ *Se* Employment Insurance Act art.1.

⁹ *See id.*

¹⁰ SeHyounbai Kim, *Labor Law* 108, Pakyoungsa (2004 (quoting Young Huh, *Korea Constitution Theor* 478; *se* Korea Constitution La § 32.1. The government intends to improve employment, vocational training, unemployment reduction, and wage policy as a labor right.

¹¹ *Se* Employment Insurance Act, art. 41.1 (90 days of benefits if the individual is under 30 years old and has made contributions for fewer than 3 years, or is any age and has made contributions for fewer than 3 years but has a disability; 120 days of benefits if between 30 and 49 with contributions for at least 1 year but fewer than 3, or if under 30 with contributions for more than 3 years but fewer than 5; 150 days of benefits if under 30 with contributions for more than 5 years but fewer than 10, or between 30 and 49 with contributions for more than 3 years but fewer than 5, or if over 50 with a disability and contributions for more than 1 years but fewer than 3 ; 180 days of benefits if under 30 with contributions for more than 10 years, or if between 30 and 49 with contributions for more than 5 years but fewer than 10, or over 50 with a disability and contributions for more than 3 years but fewer than 5; 200 days of benefits if over 50 with a disability and contributions for more than 5 years but less than 10; 210 days of benefits if between 30 and 49 and contributions for more than 10 years; and 240 days of benefits if over 50 with a disability and contributions for more than 10 years.

¹² *See id.* at art.28.I, II.

engaged in running a business for profit.¹³ Vocational competency development allowances are paid when the eligible person attends vocational training.¹⁴ Wide-area job seeking allowances are paid when the eligible person is seeking employment in a wide geographic area,¹⁵ and moving allowances are paid when the eligible person moves to get a job or to attend vocational training.¹⁶

Funding for the EIA comes from employers' and employees' premiums,¹⁷ as well as from government assistance.¹⁸ The Minister of Labor, who is in a charge of the EI, is responsible for determining how much additional government funding is required.¹⁹

1. Individuals Eligible to Participate in the Wisconsin and Korean UI Programs.

In Wisconsin, most private employment is subject to the UI provisions. Under Wisconsin's law, the worker (in order to be eligible for UI benefits) must have earned 30 times the claimant's weekly benefit rate in the "base period." The "base period" refers to the first four of the five calendar quarters preceding the worker's filing of a claim; if the worker would not qualify to receive any benefits using this period, he or she could use instead the 4 most recently completed quarters.²⁰ While one of the most basic purposes of a UI program is to provide a temporary economic cushion for employees who have lost their employment through no fault of their own,²¹ the program is designed to make sure that the individual being helped has a strong

¹³ See *id.* at art.50.1

¹⁴ See *id.* at art.51.1

¹⁵ See *id.* at art.52.1

¹⁶ See *id.* at art.53.1.

¹⁷ See *id.* at art.56, 57.

¹⁸ See *id.* at art.5; see Hyounbai Kim, *supra* note 10, at 1082-1083 (for the funding of EI, employees pay within 30/1,000 of their wages multiply one half of the unemployment benefits premium rate. Employers pay within 30/1000 of the employees' total wages multiplies insurance premium (vocational capacity development + employment stabilized premium + 1/2 of unemployment benefits).

¹⁹ See Employment Insurance Act ar. 56-2.

²⁰ See Wis. Statut §§ 108.02(4), 108.04(4).

²¹ See *id.* at § 108.02 (12) (b) 2.b.

attachment to the labor force and is really interested in finding work. To qualify for benefits, therefore, each worker must have:

- sufficient base period earnings in covered employment;
- (1) registered for work by participating in DWD's profiling program;
- (2) undertaken an active search for new work; and
- (3) made a claim for a specific week of benefits. ²² (Any agreement by a worker to waive his UI benefits is void.) ²³

In Wisconsin, there are a few exemptions for mostly small businesses, commission sales personnel, seasonal employees, individuals in certain specified occupations and railroad employees covered by the Railroad Retirement Act. ²⁴ Although there are some exceptions, most state and local governmental entities are covered employers. ²⁵ Nonprofit, tax-exempt organizations are also subject to the UI provisions if they employ four or more individuals for some part of the day in at least 20 separate weeks in a calendar year. ²⁶

²² See *id.* at §108.04 (2), (4).

²³ See *id.* a § 108.1.

²⁴ Se Wis. Stat § 108.02(15)1, (k), (15) (j) 2.-4., (13) (c), (d) (exempting employers who paid less than \$20,000 to employees in each calendar quarter and employed fewer than 10 laborers, domestic service workers who are paid less than \$1,000 in each quarter, golf caddies, individuals engaged in delivering newspapers or magazines, railroad workers covered by the Railroad Retirement Act, insurance agents compensated solely by commission, real estate agents compensated solely by commission, door-to-door or in-home sales personnel compensated solely by commission, bonuses, or overrides, individuals participating in a student nurse or medical internship program, individuals performing services while a patient in a hospital, officers of corporations or associations or managers of limited liability companies performing unpaid services, services which the employer elects, with DWD approval, to have covered by the UI law of another state, services performed for a child or spouse, or services performed by a minor child or parent, seasonal food processing work, court reporting services paid for on a per diem basis, maritime service, individuals driving leased cabs who are entitled to keep all of their fares, and services performed in seasonal tourism, agricultural, or commercial fishing and hunting if the employee receives written notice, prior to performing any service, that his work will not be covered if he does not earn more than \$500 from other employment and does not work more than a 90-day period).

²⁵ Se *id.* at §108.02 (13) (a), (b), (15) (f) 1-6, (g), (17), (19).

²⁶ Se I.R.C. § 501 (c) (3); see also Wis. Stat. at § 108.02 (13) (b), (19) and (15)(h), (i), (j) 1-4, (g) 1, 3

In Korea, the Employment Insurance Act applies to virtually all businesses that hire one or more workers (and generally without regard to whether they are temporary or hourly workers).²⁷ Not everyone who loses a job is eligible for EI benefits. The UI system provides benefits only if the worker had a recent and substantial attachment to the labor force. Employees must satisfy similar eligibility rules before they can claim any UI benefits.²⁸ In order to be eligible, the employee must

- (1) have worked during the 18-month period prior to the date of his or her job loss;²⁹
- (2) have involuntarily lost his or her job;³⁰
- (3) have lost his or her job without fault;³¹
- (4) be actively attempting to gain re-employment³²; and
- (5) for any given month, have applied for benefits.³³

However, the Act explicitly excludes businesses engaged in agriculture, businesses engaged in fishing, hunting and forestry if they regularly employ less than 5 workers and are not incorporated,³⁴ construction firms whose annual dollar volume of business is less than an amount specified by the Minister of Labor each year,³⁵ and

(excluding from UI coverage services for a church, an association of churches, or an organization principally supported by a church, services performed by a student or a student's spouse for an educational institution if the service is part of a work study/financial assistance program, or a work experience program conducted in conjunction with course work, services by a student nurse, intern, or patient for a hospital, services by an individual which are performed by an individual participating in a work relief, rehabilitation, or government-funded work training program (unless UI coverage is required by the terms of the program), and services by an inmate of a custodial or penal institution)

²⁷ See Employment Insurance Act art. 7

²⁸ See *ida* ar 12.2.

²⁹ See *idat* rt.31 (1).1

³⁰ See *idat* rt. 31 (1).2.

³¹ See *idat* rt. 31(1).3.

³² See *idat* rt. 31 (1). 4; *sei* art. 34 (to demonstrate job seeking efforts, the unemployed claimant has to visit the vocational security office every other week.)

³³ See *idat* rt. 31 (1) 5.

³⁴ See *idat* art. 2. 1.

businesses engaged in providing house-keeping services.³⁶ The Act also excludes government and local public officials,³⁷ private school teachers,³⁸ individuals who are 65 years of age or older,³⁹ employees who work fewer hours than the minimum established for regular employment by Presidential decree,⁴⁰ workers employed by the state or local government in a temporary jobs program, foreign workers who have acquired a residential work permit under the Enforcement Decree of the Immigration Control Act, seamen covered by the Seamen Act, and special post office personnel covered by the Special Post Office Act.⁴¹ The Act also excludes independent contractors. However, note that the coverage of the EI benefits will be extended from on January 1, 2006 to the age of 65 or older and the collage graduate-to-be.⁴²

Wisconsin and Korea have virtually the same rules for establishing eligibility for UI benefits. The individuals who are out of work must have been employees. One difficulty area is determining if a person is an employee or independent contractor. Generally, an employee is any person “in the service of another under any contract of hire, express or implied,” whose performance of the service is subject to another’s control or right to control.⁴³ Another category of workers who present special

³⁵ See *id.* at art. 2. 2.

³⁶ See *id.* at art. 2. 3.

³⁷ See *id.* at art. 8.5.

³⁸ See *id.* at rt. 8.6

³⁹ See *id.* at rt. 8.1.

⁴⁰ See *id.* at rt. 8.2.

⁴¹ See *id.* at rt. 8.7.

⁴² See http://hksearch.hankyung.com/cgi-bin/searchList.cgi?tl=/fulcrum/public_html/tpl/searchList.html&st고용보 (11.17.2005)

⁴³ See Arthur Larson, *Larson’s Workers’ Compensation Law*, 3 §60.01 at 60-60- (1997) (supp. 2004). One of the difficulties is determining whether a person is an employee or independent contractor. In determining whether one is an employee or an independent contractor, the following factors are considered: whether the individual has control over the details of his work; whether the individual is engaged in a distinct occupation or business; whether the work is done under the direction of someone else or by a specialist without supervision; the degree of skill required; who furnishes the equipment; how long the work will take; the method of payment; whether the work is an integral part of the business where the work is being performed; and how both parties view the relationship. No one factor controls. Thus, even if the individual operates independently of any direction and control,

problems for UI coverage are professional athletes and teachers who are between seasons or between school terms (or on a customary holiday or vacation break). The general rule is that professional athletes are not eligible to receive unemployment insurance between seasons if they have a reasonable assurance of reemployment for the succeeding season.⁴⁴ They must have had a sufficient attachment to the labor force prior to having lost their job. They must be actively searching for new work. And they must make a claim for each week in which they seek benefits.

2. Disqualifying Factors.

In Wisconsin, there are four circumstances in which an otherwise eligible employee will be disqualified from receiving unemployment insurance benefits: work-related misconduct, the voluntary termination of prior employment, the refusal of suitable work and work unavailability. In addition, employees will be disqualified for making fraudulent claims for UI benefits. Also, Wisconsin will not pay benefits when employees are not working because of a labor dispute,⁴⁵ except where the employer

he is unlikely to be viewed as an independent contractor unless he has a proprietary interest in a business that can be sold. If he has such an interest, it is irrelevant whether he works in that business on a full-time or part-time basis. Other relevant facts include whether the independent contractor advertises the business, has a separate office or name, is economically independent on the employing unit's business. See *Grutzner, S.C., Byron, Holland & Vollmer v. LIRC*, 154 Wis.2d 648, 65 (Ct. App. 1990) (holding that four individuals (a police chief, deputy sheriff, housewife, and fire fighter) who performed process serving services for a law firm were not employees of the firm for UI purposes but were instead engaged in an independently established business even though none of them worked on more than a part-time basis). See Wis. Stat. § 108.02 (12) (b) 2. § 108.02 (12) (b) § 108.02 (12) (c). Wisconsin's unemployment insurance law like the WCA, uses two tests for determining whether certain self-employed service contractors will be treated as employees or independent contractors. Such persons are employees if they (1) satisfy six of eight criteria, only one of which is control over their own work performance and (2) hold or have applied for a federal employer identification number or have filed business or self-employed federal income tax returns in the previous year. This section does not apply, however, to contract truckers, logging contractors, or skidding operators or piece cutters who perform work for forest products manufacturers, all of whom will continue to be treated as independent contractor.

⁴⁴ See Wis. Stat. § 108.04 (19).

⁴⁵ See Wis. Stat. § 108.04 (8) (9).

has “locked” employees out (regardless of the employer’s reason for the lockout);⁴⁶ it also denies benefits to aliens who are in the U.S. illegally (so-called undocumented workers).⁴⁷

Misconduct :An employee discharged for misconduct connected with employment is ineligible to receive benefits and remains ineligible until seven weeks after the discharge and until he or she has earned wages in another job in an amount at least 14 times the employee’s weekly UI benefit rate.⁴⁸ The misconduct must be connected with employment.⁴⁹ Misconduct is also different from “good cause” for termination; the fact that an employee is performing the job inadequately does not necessarily mean that he or she has engaged in any misconduct.⁵⁰ In *Boynton Cab Co. v. Neubeck*, the court identified four factors generally associated with a discharge for misconduct: the frequency of the activity, the fact that it was engaged in intentionally or with negligent disregard, the employee’s knowledge that the conduct was improper, and the adverse effect of the conduct on the employer’s business.⁵¹ Absenteeism or tardiness, even if it is frequent enough to warrant dismissal, is not misconduct unless the employee fails to give any prior notice or is absent or tardy for invalid reasons.⁵² Moreover, if the employee’s failure to give notice was for reasons beyond his control, it will not constitute misconduct.⁵³ The employee’s

⁴⁶ See *ida* § 10. 04 (10); see also Maynard G. Sautter, *Employment in Wisconsin*, at 12-5 (1997)

⁴⁷ See *id.* at §108.04 (18).

⁴⁸ See *id.* at § 10.04 (5).

⁴⁹ See Bradden C. Backer et al, *Wisconsin Employment Law* Ch. 12pg. 2(2004)

⁵⁰ See *Milwaukee Transformer Co. v. Industrail Comm’n*, 22Wis. 2d 502, 510, 126 N.W.2d 6, 11 (1964) (The general standard for determining whether an employee’s actions constitute misconduct is whether his behavior reflects an “intentional and substantial disregard of the employer’s interests or the employee’s duties.” Therefore, an employee’s failure to inform the employer that he would be absent from work, based on the advice of his doctor, while contrary to the employer’s rules, did not constitute misconduct.)

⁵¹ See Wis. Stat § 108.04(5); also see 237 Wis. 249, 259-60, 296 N.W.636 (1941).

⁵² See *Milwaukee Transformer Co.* 22 Wis. at 510 ; *Hansen v. Nercon Eng’g & Mfg., Inc.* UC Dec. Hearing No. 80-40875FO (LIRC Sept. 18, 1980) (holding that it was not a termination for “misconduct” when an employee was dismissed under the employer’s absenteeism policy, which provided for the discharge of any employee whose absences exceeded 10% of his or her scheduled work time).

refusal or failure to follow orders will also not constitute misconduct if he had defensible reasons for his actions.⁵⁴ An employee's dishonesty, such as falsifying time cards or employment applications, stealing, or lying about a co-employee's whereabouts, usually results in a finding of misconduct.⁵⁵

Voluntary termination of employment : Unless the employee's reason for voluntarily terminating his or her employment falls within one of the Act's exceptions, voluntarily leaving a job normally disqualifies the individual from receiving unemployment insurance benefits.⁵⁶ As the court explained in the *Dentici* case, a termination is a voluntary quit when the employee has made it clear from his actions that he intends to leave his employment and has made that intention clear by word or manner, or by conduct inconsistent with the continuation of his employment.⁵⁷ When an employee

⁵³ See *Universal Foundry Co. v. DILHR* No. 133-270, UC Digest MC 605.09, at 24 (Wis. Cir. Ct. Dane County Feb. 15, 1972).

⁵⁴ *SeApplenton Elec. Co. v. Minor*, 91 Wis. 2d 825, 826, 831-32, 284 N.W.2d 99, 10(1979 (holding that it was not misconduct when an employee with a serious dermatology problem that the employer was aware of, took a shower in disregard of his supervisor's instruction not to, when lubricant that had spilled onto his clothing penetrated his body).

⁵⁵ See *Backer et al., supra* note, at h. 12, p. 32; see *Leonard v. Goodwill Indus.*, UC Dec. Hearing No. 80-A-61894 MN (LIRC Jan. 21, 1981).

⁵⁶ See Wis. Stat. § 108.04 (7) (a)-(g), (i)-(r) (an employee's voluntary quit would not disqualify the employee from receiving UI benefits if he or she had quit because of sexual harassment; because the employer had directed that the employee violate state or federal law; because necessitated by the employee's health; because the employer's transfer or the employee to a different shift had made it impossible to find child care; because the employer had transferred the employee to another unit that paid only two-thirds of what the employee had been receiving; because the employer had so substantially reduced the hours of work (to less than 20 in some weeks) that the employee could no longer afford temporary housing near the employer's place of work; because the transfer to other work would have resulted in the loss of his or her accumulated seniority rights; because he had been appointed or elected to public or union office; because he had been called up as a member of the armed forces; and because the individual's employment was terminated because of an involuntary cessation of the family-owned business)

⁵⁷ *SeCity of Madison v. DILH*, 97 Wis.2d 757, 295 N.W.2d 83 at , 1980 WL 99250 Wis. App. 198) holding that an employee's quit was not voluntary when he had made several attempts (albeit unsuccessful ones) to comply with the city's new ordinance requiring that certain city employees live within the city limits of Madison); see *Dentici v. Industrial Comm'n*, 264 Wis. 181, 186, 58 N.W.2d 717, 720 at 185 (1953).

quits because of perceived unreasonable working conditions, it is a voluntary termination.⁵⁸

Refusal of suitable work : A claimant who refuses an offer of “suitable work”, including an offer of new work⁵⁹ or a recall by an employer for whom the employee worked within the last year,⁶⁰ is not eligible for UI benefits unless he falls within one of the statutory exceptions.⁶¹ The law recognizes four exceptions: (1) refusing work that pays lower wages or requires less skill,⁶² (2) refusing work that would be performed under substandard labor conditions,⁶³ (3) refusing work where the employee otherwise had good cause,⁶⁴ and (4) having enrolled in an approved training course.⁶⁵

Unavailability: A claimant who is unable to work may be disqualified from receiving UI.⁶⁶ For example, if an employee has lost his employment because of a labor dispute, other than a lockout, he is without work because he is participating a concerted refusal to work, or because his employer is shut down due to the union’s activities.⁶⁷ Also undocumented workers are ineligible for UI since they are

⁵⁸ SeWis. Stat§ 108.04 (7)

⁵⁹ Se *id.at* § 108.04(8) (a).

⁶⁰ Se *id.at* § 108.04(8) (c).

⁶¹ Se *id.at* § 108.04(8) (a)-(c).

⁶²Se *id.at* § 108.04(8) (d).

⁶³ Se *id.at* § 108.04(9) (a)-(c) (providing that a refusal of work would not disqualify the individual from receiving UI benefits if the vacant job had been created as the result of a bona fide labor dispute, or if the working conditions of the offered job weresubstantially less favorable than those prevailing for similar work in the localit; or if the offered job would require the individual to jin a company union or resign from or refrain from joining any bona fide labor organization

⁶⁴ Se *id.at* § 108.04 (8) (a), (c).

⁶⁵ Se *id.at* § 108.04(16)

⁶⁶ Se *id.at* § 108.04 (1) (a), (b).

⁶⁷ Se *id.at* § 10.04 (10) (a);*Consolidated Const. Co., Inc. v. Case*,71 Wis.2d 811 818, 238 N.W.2d 75, 76 Wis. 197) (refusing to comply with the employer’s hair length rule was not misconduct unless the employee’s beard created a work hazard);se also*Kansas City Star Co. v. DILHR* 60 Wis. 2d 591,602, 60,211 N.W. 2d 488, 49 (1973) (holding that the employer had failed to establish that the employee’s layoff was due to labor dispute where the layoff occurred prior to the time of a subsequent labor dispute). Buse*De Leeuw v. DILHR* 71 Wis. 2d 446, 447, 45,238 N.W. 2d 70,

unlawfully in the country or would not legally be able to perform any services for pay.⁶⁸

Furthermore, if the individual is receiving UI benefits from any other state, he would not be eligible for Wisconsin's UI benefits for the same week (although this provision does not preclude an employee from receiving both UI and supplemental unemployment benefits which are paid for by an employer under the terms of a collective bargaining agreement).⁶⁹ Similarly, the receipt of WC benefits for a temporary total disability (TTD) will bar UI benefits for the same week, unless the TTD benefits were paid for only part of the week, in which event the payment will not constitute a complete bar but will be treated as wages for purposes of determining whether any benefit is due.⁷⁰

In Korea, the reasons for which an otherwise eligible employee will be disqualified from receiving UI benefits include misconduct, the receipt of a large amount of money, the refusal of offered employment or training, and the commitment of fraudulent acts.

Misconduct⁷¹: An employee is disqualified for benefit payments if he or she is fired because of his or her own serious fault or was terminated for personal reasons that were fully justifiable.⁷²

Deferment of job-seeking benefits when the unemployed worker has received a large amount of money and valuables from his most recent employer⁷³ : For example, the payment of job-seeking benefits may be deferred for a period of 3 months if the employee received an amount in retirement pay that exceeds the amount determined by a Presidential Decree.⁷⁴

708, 71 (1976) (applying the labor dispute disqualification to laborers who had not gone on strike but who were not needed because the masons for whom they worked had gone on strike; in other words, the laborers' loss of work would not have occurred "but for" the strike).

⁶⁸ SeWis. Stat§108.04 (18).

⁶⁹ Seid.at § 108.04 (12) (b)-(d).

⁷⁰ Seid.at § 10.04 (12) (b) (e).

⁷¹ Se Employment Insurance Act, Art. 45.

⁷² Seid.at art. 45 (1), (2).

⁷³ Seid.at art. 45-2.

Refusal of an Offered Job or Training Program⁷⁵ : If the qualified recipient refuses to accept an offer of employment, or vocational development training offered by the head of the Employment Security Office, the payment of the job-seeking benefit is suspended from the date of such refusal, unless the employee had reasons that justified his or her refusal. ⁷⁶

Fraudulent Act⁷⁷ : When an employee attempts to receive or has received the payment of unemployment benefits through a fraudulent act or other unfair conduct, the payment of further job-seeking benefits ends on the date of such act or attempt. ⁷⁸

The grounds which disqualify otherwise eligible employees from receiving UI benefits are thus very similar under the two systems. Both disqualify employees who lost their jobs because of misconduct (although Wisconsin seems to require a more egregious level of misconduct, excluding conduct like absenteeism and tardiness), or who voluntarily quit their prior jobs, unless they had a justifiable reason for quitting. The deferment of UI benefits where the employee had received a large amount of money from his or her employer is similar to Wisconsin's rules prohibiting double dipping. Both systems disqualify employees who engaged in fraudulent acts.

3. Funding of the UI program.

In Wisconsin, the cost of the UI program is shared among the federal government, the state government and the employers. Under the Social Security Act (SSA), federal funds are made available to the states for use in paying the administrative

⁷⁴ *Seid.at* art. 33.

⁷⁵ *Seid.at* art. 46.

⁷⁶ *Seid.* (Justifiable reasons would include: 1. the job offered, or the offer of vocational development training was not suitable to the ability of the qualified claimant; 2.the offer would require a difficult relocation of the individual's residence; 3. the wage level of the offered job was unreasonably less than the wages for the same kind of occupation or the same skill level in the same area; and 4. other justifiable reasons.)

⁷⁷ *Seid.at* art. 47.

⁷⁸ *Seid.at* art. 47.

costs of operating their programs,⁷⁹ provided that the administration satisfies certain statutory requirements.⁸⁰

Employers contribute to the fund under the Federal Unemployment Tax Act (FUTA), which taxes employers on the wages they pay to their employees.⁸¹ (The current rate is 6.2% up to the first \$7000 of an employee's pay each year.) However, almost all of this tax liability is offset by a credit given to employers for the contributions they make to Wisconsin's unemployment program in the form of quarterly taxes.⁸² A private employer, who is a closed corporation, partnership, family corporation, or independent contractor, is subject to the unemployment taxes if it either paid or incurred liability to pay \$1,500 in wages in a calendar quarter or had one employee in at least 20 separate weeks in a calendar year.⁸³ While some states also impose a tax levy on employees as well as employers, Wisconsin no longer does so. Moreover, Wisconsin has from the beginning of its program (which was the first in the nation) emphasized the responsibility of individual employers for unemployment in their firms. This is accomplished through a funding system that lowers the tax rate for employers that experience lower rates of UI claims. The state maintains a separate account for each employer's contributions and for benefits paid based on employment with that employer. This minimizes the extent to which strong employers providing stable employment are required to subsidize weak employers who experience frequent and extended periods of high unemployment. The

⁷⁹ See 42 U.S.C.S. §§ 501-04.

⁸⁰ See 42 U.S.C.S. §§ 502-03; see also 26 U.S.C.S. §§ 3301 & 3302(a) (1). One of the requirements is that the state's program must provide for such methods of administration as have been found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due. The state is required to make its eligibility determinations and its benefit payments in the shortest feasible time period.

⁸¹ See 26 U.S.C.S. §§ 3301 & 3302(a) (1), § 3306(c); see also Maynard G. Sautter, *supra* note 530, at 12-2 (Federal Tax: any individual or type of organization that has one or more individuals in 20 different weeks in a given calendar year or has paid wages of \$1,500 or more in a calendar quarter.).

⁸² See U.S.C. § 3302.

⁸³ See Wis. Stat. § 108.02 (13) (e) Wages are defined in section 108.02(26) of the Wisconsin Statutes and chapter DWD 101 of the Wisconsin Administrative Code

result is that some employers may pay a maximum tax rate as high as 8.9%, whereas others may pay as little as 0.27%.⁸⁴

It is important to note, however, that claims are paid whether or not the former employer of a claimant has any money in its unemployment insurance account or not. Thus, in effect, the state program is the insurer for UI benefits due under the statute to particular employees who have suffered unemployment. But the use of an experience rating system at least allocates the overall burden of the UI program in a way that rewards low unemployment rates – which may provide at least some incentive for employers to consider belt-tightening strategies other than massive layoffs

Wisconsin also provides extended benefits (when unemployment rates are high) and supplemental benefits which are paid to individuals during their eligibility period.⁸⁵ The governor may elect to allow for the payment of additional federally funded benefits in lieu of state supplemental benefits if such an election is permitted by federal law at the time. ⁸⁶ Finally, governmental units and certain nonprofits are not required to make the quarterly tax payments. They do, however, reimburse the Department of Workforce Development for the actual amount of any benefits charged to their account. ⁸⁷

In Korea, unemployment benefits are funded by the State treasury and from premiums collected from both the employers and employees. ⁸⁸ The Minister of Labor establishes the employment insurance fund from its general account to pay the expenses required each year for the activities of the UI insurance program. ⁸⁹ This

⁸⁴ SeWis. Stat§108. 18.

⁸⁵ *Seid* at §108.142(1) (f

⁸⁶ *Seid* at §§ 108. 13 (f), (h).

⁸⁷ *Seid* at §§ 108.15(2), 108. 51(2).

⁸⁸ *Se* Employment Insurance Act art. 57 *se* Hyounbai Kim, *supra* note 1, a 1082-1083 (for the funding of EI, employees pay 3% of their wages multiplied by one half of the unemployment benefits premium rate established Minister of Labor. Employers pay 3% of the employees' total wages multiplied by the insurance premium rate (vocational capacity development + employment stabilized premium + 1/2 of unemployment benefits).

fund includes premiums, money collected from individuals, reserve funds, profits derived from the operation of the fund and other revenue as set out in the Act.⁹⁰ The Minister of Labor is responsible for the management and administration of the fund.⁹¹

Employers and employees are automatically insured.⁹² The premium which is paid by each employee is determined by multiplying his or her annual wage amount by one half of the unemployment benefits premium rate.⁹³ When an insured employee reaches the age of 64, however, the premiums are collected monthly, since employees are protected by the UI law only until age 65.⁹⁴

Employers are taxed at a premium amount based on their annual total wage payments multiplied by a combination of the employment security premium rate, the vocational ability development premium rate, and one-half of the unemployment benefits premium rate.⁹⁵

4. Income Replacement.

UI programs in the United States are designed so that the weekly benefits will be sufficient to cover nondeferrable expenses, and will continue for a sufficiently long period to protect workers through periods of temporary unemployment. In Wisconsin, each eligible employee receives a weekly payment based on his previous earnings.

⁸⁹ See Employment Insurance Act. art. 66. (1).

⁹⁰ See *id.* at art. 66. (2).

⁹¹ See *id.* at art.3.

⁹² See *id.* at art.9.

⁹³ See *id.* at art.57.

⁹⁴ See *id.* at art. 56-2.

⁹⁵ See *id.* at art. 56(3),57 The premium rates may be determined by Presidential Decree separately for the employment security premium rate, the vocational ability development premium rate and the unemployment benefits premium rate; the rate will not exceed 3%, depending on the health of the fund and on current economic conditions) see *id.* at art. 58. Korea also uses an experience rating system, so that if on June 30 the ratio of premium payments to UI claims at a particular firm for the last three years is above or below the ratio established by Presidential Decree, the premium payments can be adjusted up or down within certain limits.)

The specific amount is fixed by the state legislature, which authorizes a different weekly payment for quarterly earnings starting at \$1,100 (anyone earning less is not eligible for any benefit), and increasing in \$25 increments to \$7425. The benefit amounts are set so as to equal one-half of the claimant's previous earnings, except that the benefits are capped out at \$297 a week (which would yield the 50% replacement income rate only for those earning \$32,000 or less a year).⁹⁶ The maximum duration for benefit payments is 26 weeks, although in periods of high unemployment the benefit period is typically extended by special statutory enactments. The benefit amount actually received in any given week will be adjusted for income from part-time employment,⁹⁷ holiday⁹⁸ or vacation pay,⁹⁹ termination pay,¹⁰⁰ and sick pay,¹⁰¹ or for 50% of any pension payments received (but only to the extent that the former employer funded those benefits).¹⁰² Back pay awards are treated as wages if payment is received within two years of the earliest week for which the back pay award was made.¹⁰³ Finally, in order to prevent duplicate payments, WC benefits will be treated as wages for purposes of determining any eligibility for partial UI benefits.¹⁰⁴

⁹⁶ SeWis. Stat § 108.05(1) (j)-(n).

⁹⁷ *Seid.at* § 108.05(3) (the amount of the reduction is calculated by subtracting \$30 from the claimant's gross weekly earnings and taking 67% of the resulting balance).

⁹⁸ *Seid.at* § 108.05(4) (a) (holiday pay will be counted as wages if it is paid within 4 days of the end of the week including the holiday, except that for holidays in the week including December 25, payment must be made within 9 days of the end of the week)

⁹⁹ *Seid.at* § 108.05(4) (b) (vacation pay will be treated as wages only if it is paid by the end of the week, is allocated to that specific week, and the employee had notice that it would be so paid and allocated).

¹⁰⁰ *Seid.at* § 108.05(5) (treated as post-termination wages but only if paid in the week for which a reduction is sought, and if the payment is reasonably allocated in the post-termination period, being based for example on the employee's average earnings for that same period of time).

¹⁰¹ *Seid.at* § 108.05(5m) (treated as wages only if paid directly to the employee at the employee's usual rate of pay).

¹⁰² SeWisStat § 108.05(7) (f) 1seBacker et al, *supranote*, a Ch. 12, pp. 64, 65 (beginning in 2003, unemployment insurance benefits will no longer be offset by Social Security payments, although payments received under the Railroad Retirement Act will continue to be offset up to 50%).

¹⁰³ SeWisStat § 108.05(6); seBacker et al., *supranote* 4, a Ch. 12, p. 65.

The Korean UI law has broader purposes than cushioning the effects of unemployment and helping workers find new jobs. As stated in the Employment Insurance Act, the purpose of the UI system is to prevent unemployment, promote employment, develop and improve the job skills of the nation, strengthen the nation's vocational guidance and job replacement capacity, stabilize the livelihood of workers, promote the job-seeking activities of workers by granting them job seeking benefits when they are out of work, and contribute to the national's economic and social development. These broader objectives are reflected in the kinds of benefits provided by the Act.¹⁰⁵

In Korea, unemployment benefits are paid for 90 to 240 days (or 13 to 34 weeks) based on the claimant's contribution period and his or her age.¹⁰⁶ The unemployment benefits are divided into job-seeking benefits and employment promotion allowances.¹⁰⁷ Job-seeking benefits are set as a percentage of the claimant's "basic daily wage,"¹⁰⁸ which is the average daily wage that the claimant earned in the first three months of the four month period immediately preceding his or her job loss.¹⁰⁹ The benefit amount is normally set at one half of the claimant's basic daily wage, but if the benefit would be less than the minimum wage, the job-seeking benefit may be determined by using a ratio of up to 90% of the claimant's basic daily wage.

The job-seeking benefit is thus very much like the UI benefit in Wisconsin; it provides income replacement to cushion the economic effects of unemployment. Unlike Wisconsin, however, Korea provides low-wage workers with a larger percentage of replacement income. And, as with the two respective WC systems, Wisconsin sets a maximum limit on the dollar amount of the UI benefit, while Korea does not. The other benefit regularly paid to Korean workers when they lose their job and qualify

¹⁰⁴ *SeWisStat* § 108.04 (17) (k); see *id* § 108.04 (172) (e).

¹⁰⁵ *Se Employment Insurance Act* article 1.

¹⁰⁶ *Seid*.

¹⁰⁷ *See id* at art. 28 (1).

¹⁰⁸ *See id* at art. 35.

¹⁰⁹ *See id* at art 35 (1) (2).

for unemployment insurance benefits, is the employment promotion allowance. Different payments are made to reward early reemployment (creating an effective job seeking incentive), to make it possible for the worker to enter into a program designed to develop and improve his or her vocational ability, and to promote wide-area job searches, with allowances to cover moving and childcare expenses.¹¹⁰

III. Evaluation and Conclusion

Funding for the Korean and Wisconsin UI program is thus similar. Unlike WC, where the employer pays for the worker's compensation coverage as a cost of doing business, UI funds are made up of contributions from both the employer and the employee based on the employee's wages. The one difference is that contributions to the Wisconsin fund are collected through state and federal taxes¹¹¹ and not as in Korea through the payment of premiums.¹¹² In addition, whereas worker's compensation insures a worker from the moment he is hired, unemployment by itself is not considered sufficient justification for compensation. To receive unemployment insurance, the individual must first prove that s/he has been attached to the work force for a specified period of time. Moreover, because unemployment is more likely to be self-induced than an on-the-job injury, both the Korean and Wisconsin UI systems are designed to reduce any work disincentives created by the insurance system. Thus, in Korea, but not in Wisconsin, the period during which benefits can be collected is longer for those with the greatest attachment to the work force. (On the other hand, when unemployment rates in the U.S. are high, and it is therefore harder to find new work, it is typical for the states, including Wisconsin, to provide for extended periods of UI benefits, usually for an additional 13 weeks or 91 days.)¹¹³

Korea also provides for longer periods of benefits where the unemployed individual

¹¹⁰ See *id.* at art. 28(2).

¹¹¹ *Sesupr*text II, 3 Funding of the UI program (page 15-16).

¹¹² *Sesupr*note

¹¹³ *See* Wis. Sta 108.141 (lm).

is older or partially disabled. While there are of course many explanations for this difference, the major one is how the two governments balance the greater difficulties older and partially disabled workers have in finding new employment with the potential for creating a work disincentive by providing a longer duration of benefits. Korea addresses this work disincentive issue, at least in part, by offering counter incentives to those who find new employment quickly.

A final obvious difference between the two UI systems is that the U.S. (and/or Wisconsin) government does not ordinarily make additional contributions to the UI funds operated by the several states, whereas the Korean government routinely makes additional contributions to the fund from general tax revenue. It should be noted, however, that in periods of high unemployment in the U.S. or in certain regions of the U.S., the Congress has enacted supplemental UI laws, under which the federal government can loan monies to states with high unemployment rates so that they can provide extended benefits; these loans are then repaid when employment levels return to normal.¹¹⁴ In addition, the U.S. has enacted a series of trade adjustment assistance laws since the early 1970's, which are intended to cushion the effects of liberalized trade policies.¹¹⁵ Under these laws, if employees are able to document that their unemployment is caused by U.S. trade policy, or by their employer having moved their jobs abroad, they may be eligible not only for extended benefits, but for the kind of job seeking assistance and retraining routinely made available under the Korean law. These benefits are paid for by U.S. revenue and not through the UI funding mechanism.

The other major difference between the Korean UI system and the Wisconsin UI system is the emphasis on vocational competency development and expanded job searches outside the employee's current geographic location. These differences reflect the extent to which Korea's UI program is part of its commitment in the Korean Constitution to full and stable employment. When employment stability for certain populations of under-educated and lower skilled workers was a major political

¹¹⁴ See *id.*

¹¹⁵ See Trade Act of 1974, 93 P.L. 618; 88 Stat. 1978. Trade Act of 2002, 107 P.L. 210; 116 Stat. 933; 2002 Enacted H.R. 3009; 107 Enacted H.R. 3009.

issue in the U.S. each state had extensive job training programs, operated with both state and federal monies.¹¹⁶ But the tide of political opinion in the U.S. has shifted, with concerns for the work disincentive and benefit dependency issues overriding prior concerns for work readiness. Thus, when the U.S. enacted the 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA),¹¹⁷ most states, including Wisconsin, adopted a “work-first” philosophy in implementing the nation’s new welfare law. This meant that states de-emphasized the kind of education and skills training that still dominates in Korea, and concentrated instead on putting people to work – even if it meant creating temporary public sector jobs. The consequence has been to provide more employment, but often employment at low wage rates and with little stability or opportunity for advancement.¹¹⁸ A major difference between the two UI systems, then, is Korea’s much great emphasis on vocational training and allowances for an expanded job search. But while there is a distinct difference in the extent to which the two governments are currently involved in job training and job search, Wisconsin does meet some of these needs, not through its UI program, but through its operation of its part of the U.S. job service system, which maintains a national data base of job opportunities and makes job referrals to unemployed workers who are required to register with the job service system in order to continue to qualify for UI benefits.



▶ 이재숙

고용 보험, 실업, 직업 능력 개발, 구직, 일 할 권리

(un)employment insurance, vocational competency development, job search, vocational training and allowances, fund

¹¹⁶ See generally Eli Ginzberg, *Employing the Unemployed*, Basic Books, Inc. (1980).

¹¹⁷ See Personal Responsibility and Work Opportunity Reconciliation Act, Pub. L. No. 104 -193, 110 Stat. 2105 (1996).

¹¹⁸ See Cancian et al. Before and After TANF: The Economic Well-Being of Women Leaving Welfare, University of Wisconsin-Madison Institute for Research on Poverty (2000).

[Summary]

In Korea, actions of the International Monetary Fund (IMF) in 1997 had a detrimental effect not only economically, but socially and culturally as well and huge number of workers lost jobs. The Employment Insurance Act (1993) played a role to help unemployed workers. On the other hand, the tide of political opinion in the U.S. has shifted, with concerns for the work disincentive and benefit dependency issues overriding prior concerns for work readiness, job training programs. Thus, when the U.S. enacted the 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), most states, including Wisconsin, adopted a “work-first” philosophy in implementing the nation’s new welfare law. However, much more needs to be done to improve the living conditions of the working class.

Further, since the Employment Insurance system in South Korea was relatively new (enacted only in 1993), I was eager to see how the U.S., and Wisconsin in particular, dealt with the delivery of effective UI benefits. The comparison of the two UI systems by evaluating the rules for establishing eligibility for UI benefits, funding systems and the benefit period, would improve the two UI systems and protect the unemployed workers better.