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## FOREWORD

WITH AN INTRODUCTORY NOTE ON THE  
SOCIAL SECURITY ACT

### I

After surprisingly little public discussion and debate, the United States finds itself in the process of creating a federal-state system of unemployment compensation which, with the enactment of the Federal Social Security Act and unemployment compensation laws in a number of states, has already attained that purgatory of new social legislation to which the Supreme Court holds the keys. A decision by the Court before the close of 1937 is highly improbable, and in the interim no one can predict its action with certainty. There is, however, more basis for the prediction that an adverse ruling by the Court will not put an end for all time to the movement to relieve labor of at least part of the hazards of unemployment. If the system envisaged by the present legislation falls, the store of experience which is being amassed under it will be drawn upon in the future. The element of contingency which must pervade any consideration of the existing laws at this time does not, therefore, destroy the necessity for that consideration. On the contrary, it is essential that the unemployment compensation laws be carefully scrutinized and fully understood, and it is to that end that this symposium is directed.

In the study which has hitherto been accorded the problem of compensating the unemployed worker, emphasis has been placed upon its economic and social factors. In the agitational period of the movement for this legislation, inquiry into the precise forms which it should take would have been premature. Now that legislation is appearing on the statute books, however, a shift in emphasis is indicated, and this symposium represents a contribution to what has necessarily been a neglected phase of the problem: the legal and administrative machinery of unemployment compensation. Needless to say, the questions arising in this study cannot be considered wholly apart from their economic and social context, but this approach to the subject has dictated a disregard of the numerous plans proposed in lieu of that embodied in the present legislation. Space is lacking for their treatment concomitantly with an intensive study of the body of law which is now in course of development. More-

over, that body of law is an existing fact, and familiarity with its provisions and their implications is prerequisite to intelligent criticism.

No attempt will be made here to outline the symposium; the table of contents will afford a guide to its organization.<sup>1</sup> It should, however, be explained why no article herein deals with the constitutionality of the unemployment compensation titles of the Federal Act. While this issue has been in course of development, there have been decided, and are still pending, cases in the Supreme Court significantly relevant to the issue raised by the federal law. Rather than hazard a discussion of the problem without the benefit of the opinions in these cases, the treatment of the constitutionality of the Social Security Act was deferred to the succeeding issue in which articles by Professor Harry Shulman of the Yale Law School, counsel for the Railroad Retirement Board in the *Railroad Pension Case*, and Mr. Charles Denby, Jr., of the Philadelphia Bar, Chairman of the Committee on Unemployment Insurance of the American Bar Association's Section of Insurance, will present, respectively, the cases for and against the validity of the several titles of the Act.

## II

The Social Security Act of August 14, 1935, is a single law only in a formal sense. Essentially it is a congeries of independent measures related basically by a common humanitarian purpose. The Act contains eleven titles of which one, Title VII, establishes the Social Security Board and another, Title XI, in addition to the customary "separability clause," contains merely definitions and a delegation of rule-making power, applicable to the preceding titles generally. The unemployment compensation provisions are embraced in two of the remaining nine titles, *viz.*, Title III and Title IX. For the benefit of readers not familiar with the structure of the Act, the following note seeks first to indicate very briefly the content of the other seven titles (which will be discussed in the succeeding issue of this periodical) and then to outline in somewhat greater detail the provisions of Titles III and IX. Needless to say, condensation has been at the expense of lawyerly precision in statement.

### THE OLD-AGE SECURITY AND WELFARE TITLES

*Title I.* This title, "Grants to States for Old-Age Assistance," affords federal financial aid to states maintaining old-age pension systems under plans approved by the Social Security Board in accordance with criteria set forth in the title. These include the requirements that the pension system be statewide and mandatory in its operation and, after January 1, 1940, impose no age requirement exceeding 65 years. After June 30, 1936, appropriations are authorized to the extent necessary to match the state appropriations on an equal basis, subject to the limitation that the federal

<sup>1</sup> Logical arrangement has been sacrificed in the interests of time in the case of the article by Dr. Edwin E. Witte on the legislative history of the unemployment compensation titles of the Federal Act, which was to have appeared as the first article in the symposium. It was placed last when an unfortunate coincidence of unavoidable circumstances prevented the author from completing his manuscript in time for publication in its indicated position.

contribution shall not exceed \$15 per month with respect to any individual. The Board is accorded power to withdraw its approval of any plan in the administration of which there is a substantial failure to comply with the conditions on which approval was granted.

*Titles II and VIII.* These titles embody the national old-age insurance system to be administered by the Social Security Board. Title II, "Federal Old-Age Benefits," establishes an Old-Age Reserve Account in the Treasury to which appropriations shall be made annually in amounts, determined actuarially on a reserve basis at a 3% interest rate, sufficient to meet the benefit payments required under the succeeding sections. The Reserve Account, calculated to approach 50 billion dollars by 1980, is to be invested in federal obligations only. Title VIII levies an "Income Tax on Employees" and an "Excise Tax on Employers," the rates of both of which begin at 1% per year for the triennium 1937-1939, and increase ½% for each succeeding triennium until rates of 3% are reached in 1949. The tax is based on that part of all wages earned and paid up to \$3,000 per year in all save seven specifically excepted employments, including agricultural labor, domestic service, and public service. The proceeds of this tax are paid into the Treasury; and but for the more than coincidental identity in the definitions of "wages" on which benefits are based and the tax is payable and in the enumerations of the employments excepted from both the benefit and the tax provisions, there is no connection between the two titles apparent on the face of the statute. However, it goes without saying that the benefit scale was fixed with reference to the estimated proceeds of the tax.

Monthly benefit payments are computed as a percentage of the total wages received in other than excepted employments from January 1, 1937 to the attainment of age 65 by the recipient, and are calculated on a descending graduated scale. The lowest monthly benefit payable is \$10 and the highest, \$85. Benefits are not payable before 1942.

*Title IV.* This title, "Grants to States for Aid to Dependent Children," is to be administered by the Social Security Board and follows substantially the form taken by the old-age pension provisions of Title I. It contemplates some extension in the "mother's pension" laws existing in most states. One-third the state appropriation will be matched by the federal government, with the limitation that the federal contribution shall not exceed \$6 per month for any dependent child and \$4 per month for each additional child in the same home.

*Title V.* This title, "Grants to States for Maternal and Child Welfare," is divided into four parts. Part I provides an annual appropriation of \$3,800,000 to be allocated among states having approved plans for promoting the health of mothers and children, especially in rural and depressed areas. Part II provides an annual appropriation of \$2,850,000, to be allocated similarly, for aid to crippled children. Part III provides an annual appropriation of \$1,500,000 for child-welfare services for use by state welfare agencies cooperating on the basis of plans developed jointly by the state

and federal agencies. These three parts are to be administered by the Children's Bureau of the Department of Labor. Part IV provides an annual appropriation of \$1,938,000 for coöperation with the states in the extension of vocational rehabilitation programs developed under the Act of June 2, 1920, a grant-in-aid measure administered by the Federal Board for Vocational Rehabilitation, an independent agency.

*Title VI.* This title, "Public Health Work," provides one annual appropriation of \$8,000,000 to be allocated among the states by the Surgeon General of the Public Health Service for aid in establishing and maintaining adequate public health services and another annual appropriation of \$2,000,000 to the Public Health Service for the investigation of disease and problems of sanitation.

*Title X.* This title, "Grants to States for Aid to the Blind," returns to the form of Titles I and IV in providing federal grants equally matching state appropriations under approval plans for pensions to the needy blind, the federal contribution not to exceed \$15 per month per individual.

#### THE UNEMPLOYMENT COMPENSATION TITLES

As noted above, Titles III and IX contain the provisions of the Act relating to unemployment compensation. Unlike the provisions relating to old-age insurance, the Act establishes no national system of unemployment compensation. Instead it contemplates such a system in each state. To encourage and facilitate—or, the Supreme Court may hold, to coerce—state action to this end, a federal tax is placed upon employers against which contributions made by employers to state unemployment compensation funds can be credited. An appropriation is made for grants in aid of the administration of state laws.

Title III, "Grants to States for Unemployment Compensation," provides an appropriation of \$49,000,000 for each year after June 30, 1936 for allocation to states having unemployment compensation laws approved by the Board, to be used solely for administrative purposes. The principal criteria for the guidance of the Board in the approval of state laws for these grants are the following: The state law must provide (1) reasonably adequate methods of administration (other than those relating to selection, tenure, and compensation of personnel); (2) payment of benefits solely through public employment offices or other approved agencies; (3) fair hearing for benefit claimants; (4) payment of all contributions received in the state compensation fund immediately to the Federal Unemployment Trust Fund (described below); (5) expenditure of all money requisitioned therefrom in the payment of benefit claims exclusively; (6) making of such reports as may be required by the Social Security Board; and (7) furnishing, on the request of federal public works agencies, information relating to benefit recipients. The Board is empowered, after hearing, to withdraw the approval accorded any state plan upon substantial failure of the state to comply with the foregoing conditions.

The "Tax on Employers of Eight or More," imposed by Title IX, is denominated

an "excise tax"; the rate for 1936 is 1% of the total wages paid in employments subject thereto. For 1937, the tax rate is 2%; for 1938 and thereafter, 3%. Proceeds of the tax, which is collected by the Bureau of Internal Revenue, are covered into the general funds of the Treasury of the United States. A taxpayer may credit against this tax all contributions paid to a state unemployment fund under a state law certified by the Social Security Board, up to 90% of the total federal tax. Thus, if the state contribution rate for 1936 is 0.9%, the taxpayer can credit his entire state contribution against the federal tax, paying only 0.1% to the federal government. The 0.9% contributed to the state fund is required, by the conditions of certification, to be paid into the Federal Unemployment Trust Fund to the credit of the state which may draw upon it solely for the purpose of making benefit payments.

The conditions of certification of state laws for tax credit purposes overlap, but are not identical to, those for the approval of state laws for grants-in-aid. The conditions for approval numbered (2), (4), and (5) above are repeated in the conditions for certification, but the latter also embrace the following requirements: (1) the postponement of benefit payments for two years from the beginning of the contribution period; (2) the absence of provisions denying benefit payments to a person who refuses to accept new work in a position (a) vacant because of a labor dispute, (b) in which the conditions of work "substantially less favorable" than the prevailing conditions for such work, or (c) where as a condition to employment he is required to join a company union or to abstain from membership in a "bona fide labor organization"; and (3) the retention of legislative power to repeal or amend the law. The Board may withdraw its certification, after hearing, at the end of any year in event of substantial failure to comply with these conditions.

The Unemployment Trust Fund into which contributions are to be paid is to be administered by the Secretary of the Treasury. Deposits may be made by states either directly with the Secretary or in Federal Reserve Banks or member banks designated by him. Funds not required for immediate withdrawal are to be invested in United States direct or guaranteed obligations, acquired on original issue at par or by purchase at the market price. Special obligations may be issued to the Fund at par bearing interest at one-eighth of 1% less than the average rate borne each month by all interest-bearing debts of the United States then outstanding.

The employers subject to tax are those who employ eight or more persons on each of 20 days during the taxable year, each day being in a different week, a provision designed to eliminate employers operating for short seasonal periods. The principal employments excepted from the tax are (1) agricultural labor, (2) domestic service, (3) public service, (4) service for religious, charitable, educational and similar institutions not operated for profit.

Although the conditions for certification of state laws under Title IX are more consequential than those for approval under Title III, perhaps the greatest control over state legislation is that effected by the "additional credit" provisions of Title IX.

The tendency in American legislation in this field has been to equate in some degree the employer's liability to pay contributions with his employment record, whether this is to be achieved through the employer reserve system, merit rating under state pool plans, or through guaranteed employment plans. These plans are discussed in subsequent articles; it suffices here to say that under all of them the opportunity is open to the employer whose employment is stable—or is stabilized—to reduce his contribution rate. If this reduction in rate were accompanied by a reduction in the credit allowed against his federal tax, then, of course, he would effect no gain and the desired equating of rate to record would be defeated. This result is prevented by provisions in Title IX, operative after 1937, which permit an employer who pays less than the highest state rate to obtain an "additional credit" against the federal tax equal to the difference between the rate actually paid by him and 90% of the federal tax (or the highest state rate, whichever is the less). Thus, if, by reason of merit rating, an employer pays a state contribution of 1% when the highest state rate is 2.7% (*i.e.*, 90% of the 3% federal tax) the taxpayer will be allowed a credit of 1.7% against the federal tax in addition to the credit of 1% for the contributions actually paid by him. He will therefore be out of pocket only 1.3% of his payroll, whereas the taxpayer not enjoying any reduction in his contributions will be obliged to pay the full 3%.

Additional credit is permitted only under state laws which meet certain requirements, specified in Title IX, designed to prevent the granting of lower rates under conditions likely to jeopardize the protection accorded the unemployed. However, they permit the adoption by the states of the employer reserve system, merit rating under state pool plans, or guaranteed employment plans, or combinations of these systems. No effort will be made herein to outline these conditions which are discussed in the articles dealing with the respective devices.

D. F. C.