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Labor Legislation

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such as group life and hospitalization insurance and "sick pay" exclusions. A reason why many people living in some of the twenty states[34] in which the corporation law has been passed may not take advantage of it, but rather will choose the federal approach, is because the treasury still hasn't ruled whether the corporate type organizations formed under the state laws qualify for corporate tax treatment. However, those states following the Kintner regulations[35] will be permitted to rule that associations formed for professional services may permit their members to be taxed as corporate employees, but there are no federal regulations allowing professional individuals as individuals to incorporate for tax purposes. This is solely a matter of state law,[36] and the people in those states[37] acting under such laws are doing so without a treasury ruling. "The execution of the power to tax income is not subject to state control. It is the will of Congress which controls, and the expression of its will in legislation, in the absence of language evidencing a different purpose, is to be interpreted so as to give a uniform application to a nation wide scheme of taxation. State law may control only when the federal taxing act, by express language or necessary implication, makes its own operation depend on state law."[38]

The proponents of the act applaud it for reasons of fairness and uniformity among the working public. They say that the bill is designed to encourage the establishment of voluntary retirement plans by self-employed persons by extending to these people some of the favorable tax benefits that present law now provides in the case of qualified retirement plans established by employers for their employees.[39] Some of the objections to the act are that it singles out for assistance a class of people, the self-employed, who as a group are, generally speaking, least in need or deserving of assistance, and that the act badly erodes the tax base at the time when the crying need is for tax reform through broadening that base.[40]

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LABOR LEGISLATION

THE RETRAINING ACT

During the second session of the 87th Congress, the Manpower Development and Training Act of 1962[1] was passed. Enactment of this major piece of labor legislation manifests congressional cognizance of the problem of unemployment caused by automation.[2] The legislation recognizes the

34 Supra note 24.
35 Supra note 28.
36 Supra note 26.
37 Supra note 25.
38 Burnett v. Harmel, 287 U.S. 110 (1932).
39 S. Rep. No. 992, 87th Cong., 1st Sess. 1 (1961).
40 Id. at 56.

1 Pub. L. No. 87-415, 76 Stat. 23 (1962) (hereinafter referred to by section).
2 Section 101 states that "Government leadership is necessary to insure that the benefits of automation do not become burdens of widespread unemployment . . . ."

existence of unemployed who cannot respond to "pump priming" because they possess skills no longer demanded by the economy.

The purpose of the Retraining Act is "to require the Federal Government to appraise the manpower requirements and resources of the Nation, and to develop and apply the information and methods needed to deal with the problems of unemployed resulting from automation. . . ."[3] The objective of Congress in passing the legislation is to allow the nation to reap the benefits of technological progress while avoiding or minimizing present individual hardships and widespread unemployment.[4]

Since unemployment due to automation is a recent problem in the economy and since there is relatively little information available concerning it,[5] the legislation emphasizes the gathering and compilation of facts relative to the constantly changing labor market. The powers granted the Secretary of Labor to carry out the analysis are divided into two categories, those which are concerned with the over-all effects of automation on the economy[6] and those which are concerned with the unemployed individual.[7] The former focuses on the problems as national in character and the latter seeks to provide an appropriate basis for the retraining of the existing unemployed.

The general authority to initiate the retraining program is within the Department of Labor. In addition to surveys to determine the skills for which the unemployed should be trained, the Secretary of Labor is directly responsible for the selection of trainees, the payment of training allowances and the placement after training.

The retraining program is predicated on the theory that the automation which eliminates the jobs of some workers creates jobs for which those workers can be retrained. The legislation is an attempt to speed the worker's adjustment to the changing economy so that he will suffer the least possible hardship. However ambitious the program may be, it has been recognized that some classes of unemployed persons may never respond to training.[8] The legislation does not deal directly with this practical problem except that the unemployed does not have a *right* to be retrained. The final decision as to whether a worker is to be retrained, and for what skill, lies with the Secretary of Labor.

Other serious social implications are evident in the basic structure of the legislation. The effects of automation are nationwide, but the newly created jobs are not necessarily in the areas where unemployment exists. To make the program successful it is evident that either industry or the worker must be willing to relocate.

The integrated nature of the automatic factory and the new skills required by automation may lead industries to shift to new geographical

[3] Section 101.

[4] 108 Cong. Rec. 2734, 2735 (1962) (remarks of Representative Powell).

[5] Fanning, The Challenge of Automation, 10 Loyola L. Rev. 123 (1961).

[6] Section 102.

[7] Section 103.

[8] Horowitz, Automation and Full Employment: A Public Point of View, Proceedings of N.Y.U. 14th Conf. on Labor 329, 332 (1961). "[T]he unemployed worker, aged 40 years and over, who was a coalminer, a railroad brakeman, or a longshoreman, may never make the transition to the white collar jobs that may become available."

locations rather than automate existing plants;[9] but this type of relocation of industry tends to increase the gravity of the unemployment problem within that industry's labor market. The legislation makes no attempt to regulate the location of these established industries into areas of high unemployment. It expressly prohibits assistance in relocating industry from one area to another, but such

> limitation shall not prohibit assistance to a business entity in the establishment of a new branch, affiliate, or subsidiary of such entity if the Secretary of Labor finds that assistance will not result in any increase in unemployment in the area of original location or in any other area where such entity conducts business operations, unless he has reason to believe that such branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where it conducts such operations.[10]

The legislation would thus seem to favor newly established industry or established industries which are increasing their total employment and, in a negative way, discourage the relocation of those industries which would increase the unemployment in the area from which they leave.

The Secretary of Labor may train a person for employment which is not available in the area in which the person resides only upon "reasonable assurance of such person's willingness to accept employment outside of his area of residence."[11] Although the legislation does not define or qualify "reasonable assurance," the Secretary of Labor is given the authority to prescribe such rules and regulations as he may deem necessary and appropriate to carry out the provisions of the act.[12] This gives the Secretary great latitude in defining the scope of the legislation as well as aiding in the implementation of it.

Training allowances, which are provided for in the act, also anticipate the mobility of labor by providing, in addition to the weekly unemployment compensation, payments of such sums as the Secretary of Labor may determine to be necessary to defray transportation and subsistence expenses for separate maintenance of such persons when training is provided in facilities which are not within commuting distance of the trainee's established residence.[13] The net effect of these provisions is to encourage persons to move to areas where job opportunities exist. However, the statute obligates the Secretary of Labor to give priority in referral for training to persons to be trained for skills needed within (1) the labor market area in which they reside and (2) the state of their residence.[14]

The act itself demonstrates that it is not meant to be a mere extension

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[9] Colburn, A Union View to Automation, Proceedings of N.Y.U. 14th Conf. on Labor 313 (1961).

[10] Section 306(b).

[11] Section 202(d).

[12] Section 207.

[13] Section 203(b).

[14] Section 202(b).

or substitute for unemployment compensation.[15] The person being trained will receive training allowances but he will not be eligible for training allowances if he has received or is seeking unemployment compensation.[16] The training allowances shall not exceed the amount of the average weekly unemployment compensation payments (including allowances for dependents) for a week of total unemployment in the state making such payments.[17] Also, the payments are not to exceed a period of fifty-two weeks for any one individual.[18]

The legislation forbids any payment of training allowances for one year after the training is complete[19] or after the training is turned down without good cause.[20] This will not affect the worker's right to unemployment compensation, but will prevent the worker from waiting until his unemployment compensation runs out and then obtaining training allowances.

Training allowances will be limited to unemployed persons[21] who have had not less than three years experience in gainful employment and are either heads of families or heads of households as defined in the Internal Revenue Code of 1954.[22] The allowance is a fifty-fifty state matching fund after the second year.[23]

The Secretary of Health, Education and Welfare is charged with carrying out the responsibilities for vocational education and training. He is to rely upon the information gathered by the Secretary of Labor as to the occupational needs of the nation, the particular market areas and the potential of individuals selected for training.[24] The Secretary is given authority to contract with state agencies for such training, the actual training being done through available public and/or private institutions.[25] The state will be reimbursed for fifty per cent of its cost of carrying out the training. A cooperative relationship between both Departments to insure that each will take full advantage of the information and techniques available to each other is essential if the program is to operate successfully.[26]

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[15] 108 Cong. Rec. 2735 (1962) (remarks of Representative Kearns): "We want to make it clear that this is not a gimmick to get people off the street—a meaningless make-work project. This is and must be a meaningful training program with a job waiting for the trainee once he successfully completes the course of training."

[16] Section 203(e).

[17] Section 203(a) The section, however, does provide that in any week an individual who, but for his training, would be entitled to unemployment compensation in excess of such allowance, shall receive an allowance increased by the amount of such excess.

[18] Section 203(a).

[19] Section 203(i).

[20] Sections 203(f) & (i).

[21] Section 202(a) defines unemployment as including workers in farm families with less that $1,200 annual net family income.

[22] Section 203(c).

[23] Section 203(d).

[24] Section 231. Also, section 204 provides for on-the-job training. The authority for training under section 204 is with the Secretary of Labor and not with the Secretary of Health, Education and Welfare.

[25] Section 231. The Secretary does have the authority, in case the state does not contract with him, to provide the needed training by agreement or contract with educational institutions.

[26] For an insight into possible jurisdictional conflict between the Departments, see 108 Cong. Rec. 2732 (1962) (remarks of Representatives Landrum & O'Neill).

Whether the legislation will have a noticeable effect upon labor-management relations is uncertain. It is too premature to give an effective analysis in this area. However, if the retraining program is as successful as anticipated, it appears that union pressure for featherbedding programs will decrease, even though it is clear the legislation, since it strikes at only one aspect of featherbedding, is not a solution for that complex problem. Since union members have in the past, where private retraining programs existed, more often than not chosen severance pay over retraining,[27] it would seem that union negotiators will continue to demand severance pay in their contract negotiations.

OTHER LEGISLATION

The Welfare and Pension Plans Disclosure Act Amendments of 1962[28] represent a bolstering of the original provisions of the act. The major changes include (1) the increase in the enforcement authority, (2) the power to issue regulations and (3) the right authoritatively to interpret the statute.

The Secretary of Labor is able to issue administrative details necessary for successful compliance with the provisions of the law. The Secretary may now compel the submission of reports in the form and detail required by the Department. He is empowered to investigate the accuracy of these reports and he may, upon reasonable cause, investigate on his own motion violations of the statute involving matters other than filings.[29] These investigatory powers give the responsibility for the protection of the beneficiaries of the pension plans to the Secretary of Labor. The amendments reject the underlying premise of the 1958 Act that "the individual participant in the pension plan is expected to detect maladministration and invoke legal remedies to protect his own interest."[30]

In order to enforce compliance with the law, the amendment provides for three new felonies: kickbacks, embezzlement and the filing of fraudulent reports.[31] The Secretary of Labor will be able to enforce the conflict of interest provisions of the statute with criminal sanctions.

A significant new feature of the amendments is the provision requiring the bonding of all administrators, officers and employees who handle any of the funds or assets of the pension plan.[32] The Secretary is given extensive authority to issue necessary regulations with respect to the bonding. He can exempt plan personnel when he believes that other bonding arrangements afford adequate protection. He may also select the general bond forms, accept security in lieu of bonding and proscribe the amount of the bond within the maximum and minimum amounts set by the statute.

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27 108 Cong. Rec. 2734 (1962) (remarks of Representative Hiestand).

28 Pub. L. No. 87-420, 76 Stat. 35 (1962).

29 Pub. L. No. 87-420, § 15(d).

30 U.S. Code Cong. & Ad. News 508 (1962).

31 Pub. L. No. 87-420, § 17.

32 Pub. L. No. 87-420, § 13.