

**STATE OF WYOMING
PROGRAM IMPROVEMENT STUDY
FINAL REPORT**

LAST ACTUAL EMPLOYMENT

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FOCUS AND SCOPE

Wyoming has experienced significant Quality Control (QC) error rates in recent years due to the misapplication of the state definition for "most recent employment" by state employment security agency (SESA) personnel. In 1989, prior to the beginning of this study, approximately 38 percent of the separation case errors were attributed to this problem. During the same year, separation cases accounted for 37 percent of the total QC error rate. It is felt that much of the reason for these errors is due to the complexity of the state's most recent employment definition, which is:

"Employment for wages or salary for the last employer for whom the claimant worked prior to filing a new initial or additional claim for unemployment insurance. Such work must be bona fide employment. It includes either subject or non-subject work as defined in the Wyoming Employment Security Law. It contemplates some degree of permanent or steady employment. Further, it excludes self-employment or so-called "contract" work as an independent contractor, and known temporary or casual work." (Wyoming Policy and Precedent, C-897-78)

This definition differs considerably from a model definition that was adopted for purposes of this study. The model definition assures that the last employment of a claimant will always be considered the most recent employment. This definition is as follows:

"any work for any employer for whom the claimant provided services in return for financial consideration, or agreed upon in-kind payment in lieu of money."

Proper application of the most recent employment definition is critical in Wyoming because, by law, the claimant's nonmonetary eligibility depends directly on the reason for his or her separation from the most recent employment. Under the law, if an adjudicator determines that the last employment is not the most recent employment, the claimant may be nonmonetarily eligible for benefits, in spite of the reason for separation from the last employment.

The state's experience with the current definition shows that the many facets of the definition are difficult to apply correctly at the time the new initial claim is received from the claimant, and thereafter during the adjudication process. This is because of the subjective interpretation that is required for different aspects of the definition. In real circumstances, a number of SESA personnel may actually review the claim of a single claimant and each could potentially reach a different determination of the most recent employment. For

example, the claimstaker who receives the claim might feel that the last employment agrees with all aspects of the definition. He or she would in turn, conduct any fact finding on a separation issue that is present. During the adjudication process, an adjudicator may feel that the last employment does not agree with one or more points of the definition. Thus the employment would no longer be considered the claimant's most recent employment, the issue would no longer exist and the fact finding would have been unnecessary. However, during a subsequent QC audit, the investigator may yet determine that the adjudicator has misinterpreted the application of the law concerning the employment and find the case in error. As a result, a nonrecoverable overpayment would exist. Obviously, a number of problems and wasted effort are avoided when the most recent employment is uniformly determined by all agency representatives who work with the claim.

The purpose of this study was two-fold. First, state UI administrators desired to respond to the high error rates by testing the application of a different definition for most recent employment. Second, and closely linked to the first reason, was the desire to determine the effect on the state's UI trust fund that would result from a change in the definition. A change in the definition, although recognized as a possible answer to the problem of high error rates, could not be implemented if it had an undesirable effect upon the trust fund.

A tendency may exist to believe that use of the model definition in preference to the current state definition, would result in a greater drain on the trust fund. This theory is based upon the assumption that short-term employment is usually a "spot job" or temporary work from which the worker is laid off. Also, where nonmonetary eligibility is based strictly upon the last separation, astute claimants realize that a separation issue can be circumvented by going back to work in short-term employment before filing for unemployment insurance. From another point of view, QC findings show that a number of potential separation issues are not being addressed because of the use of the state definition. In other words, the claimants are being separated from the last employment for reasons other than lack of work, but the last employment (and potential issues) are sometimes overlooked in favor of other employment which meets the state definition. An increase in the number of separation issues would probably result in a decrease on benefit payments from the trust fund. It was felt that this study would help to determine which of these results was more likely to occur.

METHODOLOGY

To test the utility of a new employment definition, it was desirable to determine the frequency of errors in application

of the definition, in addition to the effect of the definition on the trust fund. Unfortunately, it was not possible to test the error rate of the model definition without actually implementing it for at least a sample of claimants throughout the state. This was determined not to be feasible. However, by utilizing the model definition, which makes it simple to identify the most recent employment, such a need no longer existed. The only remaining need was to determine the effect of this definition on the trust fund.

The effect of the new definition on the trust fund was determined by comparing the maximum benefit potential of sampled claimants (based on the state definition) against the maximum benefit potential of the same claimants (based on the model definition.) Because of the potential difference in nonmonetary eligibility that existed for a given claimant in the sample, depending on the definition, it was recognized that the potential benefit payments may also vary. Once the results were obtained for the sample, this information was used to determine the monetary effect on the trust fund for the year.

Ideally, the study sample would have been selected from QC data accumulated during the current or preceding year. However, insufficient data existed from which cases could be drawn for a sample because of the modest size of Wyoming's claimant population. This was true even though the problem of incorrectly choosing the last employer in Wyoming is significant. Therefore, a sample was selected from new initial and additional claims where the most recent employment used by the agency to determine nonmonetary eligibility, was not actually the last employment prior to the claim. The sample size was set at 100 cases. The final tally following data collection was 101 cases, or 1.3 percent of the total claimant population. The data collection period was from December 1990 through June 1991.

All areas of the state were represented in the sample. Prior to the beginning of the data collection period, claimstakers were instructed to list on the initial claim form (Form WYO-100) all the claimant's employment that matched the model definition, for at least the three-month period immediately preceding the new initial or additional claim. This included employment that lasted less than one day. These instructions were carried out until the sampling was concluded. Claims were submitted by local office staff to the central office for file storage or nonmonetary protest or appeal, according to normal time frames. However, before the claims were routed to the UI Benefit Section for handling, they were sent to the Quality Review Unit. There they were examined to determine if the most recent employer selected by the local office differed from the last employer. If so, the claim was included in the sample.

By the time the WYO-100 forms had reached the Quality Review

Unit, the real nonmonetary eligibility of the claimants had already been determined by local office adjudicators. Therefore, the QC investigator needed only to ascertain the claimants' nonmonetary eligibility based on the actual last employer. This was accomplished by contacting the respective employer by telephone for a separation statement. Where necessary, a follow up letter was sent to the employer for the information. Issues identified during this process were referred for adjudication, to the local office from which the claim originated.

The use of local office adjudicators differed from the plan which called for the adjudication to be done by the QC investigator. One of the Wyoming agency's goals in this study was to duplicate real circumstances as much as possible. While QC investigators have authority to adjudicate nonmonetary issues and actually do this work regularly, it was felt that local office adjudication would be more representative of real circumstances. As a result, the potential effect of the new definition on the trust fund would be more accurate.

Special consideration was given to voluntary quit cases in determining potential benefit payments to the claimant. Wyoming disqualifies a voluntary quit claimant until he or she has been employed in an employee-employer relationship for a period of at least 12 weeks and has earned at least 12 times the weekly benefit amount. This penalty allows the claimant to requalify for benefits if the disqualification occurs early enough in the benefit year. However, the average claimant in this scenario will not receive all benefits to which he or she was originally entitled.

A figure was available that represented the average total amount of benefits that were paid to disqualified voluntary quit claimants (including payments both before disqualification and following requalification.) This figure, which was \$1,169, was obtained from a special study that was conducted in 1990. In order to make the trust fund projections for this study as realistic as possible, this amount was used whenever a voluntary quit disqualification was shown for either the state most recent employment or the model most recent employment.

PRINCIPAL FINDINGS

The results of this study, as shown in Figures 1 and 2, and in Table I, support previous QC findings concerning the presence of nonmonetary issues in cases where the last employment was not used as the most recent employment. A significant increase in issues was detected when the model definition was used.

ISSUES

USING STATE MOST RECENT EMPLOYMENT DEFINITION

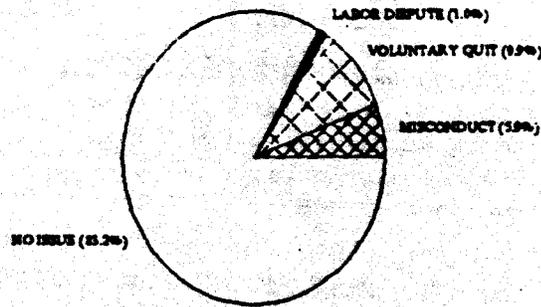


FIGURE 1.

Percent of claimants in the study who fell into each category using the State definition to certify most recent employer.

ISSUES

USING MODEL MOST RECENT EMPLOYMENT

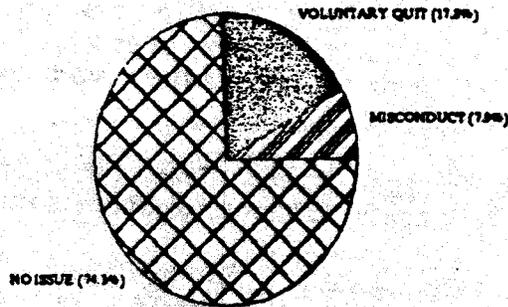


FIGURE 2.

Percent of claimants in the study who fell into each category using the Model definition to certify most recent employer.

TABLE I. REASON FOR SEPARATION

State Definition			Model Definition		
Type of Case	Total No.	% of Total	Type of Case	Total No.	% of Total
Misconduct	6	5.9	Misconduct	8	7.9
Voluntary Quit	10	9.9	Voluntary Quit	18	17.8
Labor Dispute	1	1.0	Labor Dispute	0	0
No Issue	84	83.2	No Issue	75	74.3
Total	101	100	Total	101	100

An increase in the number of misconduct and voluntary quit issues occurred when the model definition was applied for most recent employment. The increase was most pronounced among voluntary quit cases, which increased by 80.0 percent. The majority of the new issue cases involved claimants who experienced no separation issue on the most recent employment, based on the state definition. The changes that occurred are described below.

Misconduct Cases: Four of the misconduct issues under the state definition were replaced by non-issue separations because of the change in most recent employment. One misconduct issue was replaced by a voluntary quit issue. Six new misconduct issues were detected for claimants who previously had no issue. One misconduct issue replaced a voluntary quit case. A net gain of two misconduct issues existed following the change in definition.

Voluntary Quit Cases: Four voluntary quit issues under the state definition were replaced by non-issue separations due to the change in most recent employment. As stated in the above paragraph, one voluntary quit issue was replaced by a misconduct issue and one misconduct issue was replaced by a voluntary quit issue. Twelve new voluntary quit issues were detected in cases which were previously non-issue cases. A net gain of 8 voluntary quit issues was experienced following the definition change.

Labor Dispute Case: The one existing labor dispute issue became a non-issue following the change.

Non-Issue Cases: Based upon the above descriptions, a net loss of 9 non-issue cases was experienced following the change in most recent employment.

Demographic Correlation: The survey results were examined to determine if claimant age, education, or industry code had an effect on the issue variance between the state and model definitions. The results were totally random with demographic factors showing no correlation to issue changes. This aspect of the study was undertaken, because of the high incidence of seasonal employment in Wyoming. A number of

seasonal and nonseasonal industries were represented , but no correlation was found between them and the study results.

Effect On The Trust Fund: The total benefits that were potentially payable to sample claimants, based on the current state definition of most recent employment was \$349,229. When the new definition was applied, the total benefit potential dropped to \$313,686, for a 10.0 percent difference of \$35,543. Therefore, use of the model definition for all UI claimants where the last employer is questionable, could be expected to result in a 10.0 percent reduction in benefit payments.

The study results do not support the theory that much of the short-term last employment consists of spot jobs or temporary work from which the claimant is laid off. The increase in separation issues indicates that many of these separations occurred because of a voluntary quit or the claimant was discharged due to potential misconduct. As shown above, the number of cases with no issues actually decreased, while issue cases increased with the definition change.

This study did not include an analysis of short-term employment where the claimant was attempting to circumvent a potential nonmonetary issue involving the most recent employment. Such an analysis could not be easily conducted without actually implementing a new definition. Although this problem would potentially detract from the value of the change, it is felt that proper framing of the definition and complete fact finding at the local office level would help to alleviate the effects of this problem.

The use of the model definition would enable local office personnel to consistently detect the most recent employment of claimants accurately. This in turn, is projected to result in a reduction in the QC error rate. Also, some trust fund savings are projected when the most recent employment is consistently determined to be the last actual employment. On the basis of the study results, a change in the definition of most recent employment is justified.

RECOMMENDATIONS

It is recommended that a change in the most recent employment definition be adopted in Wyoming. This could be accomplished by adopting the model definition outright. However, if this definition is not acceptable to management, it is recommended that a definition be adopted that is less subjective than the current state definition. Also it is recommended that the adopted definition facilitate greater reliance on the last employment for the purpose of determining the nonmonetary eligibility of the claimant.

Subjectivity can be alleviated by eliminating questionable sections of the definition or by placing absolute values in the definition. For example, instead of stating that the most

recent employment ". . . contemplates some degree of permanent or steady employment," the definition could state that the employee must work for a specified number of days or weeks. With this in mind, the following definition is recommended as an alternative to the model definition.

"Employment for wages or salary for the last employer for whom the claimant worked prior to filing a new initial or additional claim for unemployment insurance. Such work excludes self-employment or so-called "contract" work as an independent contractor. It includes either subject or nonsubject work as defined in the Wyoming Employment Security Law. Also, the work must last at least two weeks in duration, except in cases where the reason for separation was other than lack of work. In such cases, no minimum limit is set on the duration of employment."

This definition greatly reduces subjectivity in the current state definition. Also, it facilitates greater reliance on the last employment for nonmonetary adjudication. As such, its use can be projected to reduce the incidence of QC errors and to have a positive effect on the trust fund.

The two-week criteria would allow the state to continue to exclude some temporary or non-permanent work from consideration as the most recent employment. This was considered important because of the makeup of the current state definition which excludes such work. The effect of the two-week limit on the most recent employment was determined by examining available case work in the sample. This research revealed that 33 percent of sampled claimants worked for at least two weeks for the last employer. The remaining claimants worked for less than the two-week period.

The inclusion of all employment associated with a potential nonmonetary separation issue, assures that legitimate employment that was intended to be long-term, will not be overlooked as the most recent employment, due to the two-week criteria mentioned above. It is recognized that a voluntary quit or the discharge of an employee may take place within a few hours or days after the employment begins. Also, the provision has the added value of limiting the potential of claimants to avoid a nonmonetary issue (involving previous employment) by going back to work for only a few hours or days and then quitting the employment or getting themselves discharged. Follow up research in this area showed that 17 percent of the claimants who worked for less than two weeks, had a potential voluntary quit or misconduct issue. When these were coupled with the claimants who worked for at least two weeks, it equaled 50 percent of the sample population. This means that the last employment of 50 percent of the sampled claimants that was rejected under the current state definition, would be considered the most recent employment under the optional definition.

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Last Actual Employment
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