EXTENSION OF UNEMPLOYMENT INSURANCE TO CERTAIN FISHING SERVICES

By Richard A. Kahn *

The new Unemployment Insurance Law (Public Law 719, 79th Congress, approved by the President on August 10, 1946) is a result of a well-established policy of the United States Congress to extend unemployment insurance to as many services as possible. For the first time in the history of the United States, Federal unemployment insurance has become obligatory in certain fishing services, although many such services on small vessels and in small enterprises are still excluded. Previous to August 10, fishing services, if performed by an officer or member of a crew of a vessel on the navigable waters of the United States, were excluded. This provision excluded practically all fishing services.

The newly included services are:

1. Services performed in connection with the catching or taking of salmon or halibut for commercial purposes;

2. Services performed on or in connection with a vessel of more than 10 net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States).

All other fishing services are still exempt from Federal unemployment insurance; notably, all services exclusive of 1 and 2 above performed "by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life." It may be noted that under the quoted provision, oyster farming on unnavigable waters is exempt. Under previous law these services were included.

The reasons for previously excluding fishing services were the seasonal character of the fishery industries, as well as the questionable nature of fishery employment, and the difficulties of administering a law covering services performed mostly on the waters, where inspection by the tax collector is difficult.

The Federal Unemployment Insurance Tax applies to all firms having eight or more employees who are employed at least 1 full day in each of 20 or more different calendar weeks during the year. The rate is 3 percent on each employee's wages--up to $3,000 per year--paid for services performed after June 30, 1946. However, in some States, a lower so-called "experience rating" is permitted. Experience rating is the determination of the insurance rate for individual employers on the basis of a favorable experience with unemployment. After a minimum probational period of 3 years has been passed, experience in the individual employer's establishment or in other establishments of similar character may be used to establish experience ratings in a new enterprise, or in a newly added industry, such as, in this case, the fishing industry.

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It is estimated that approximately 35,000 members of the fishery industries are affected by the new law. The provisions of the new law cover employment on all vessels of the salmon and halibut fleets, where the employer has eight or more employees. The salmon and halibut fleets employ about 6,200 persons in the continental United States and 8,500 in Alaska--a total of 14,700. Of this number, approximately 4,500 persons work for employers having eight employees or more, while the others work in smaller fishery enterprises.

Inclusion of vessels of more than 10 net tons affects the larger vessels along both coasts and on the Great Lakes, particularly the New England groundfish fleet and the California purse seiners. According to recent statistics, vessels over 10 net tons included 2,789 motor vessels, 72 sail boats, and 55 steam vessels. Consequently, at least 2,916 vessels are involved, having an aggregate crew of about 30,000 members.

As mentioned above, the Federal tax due for services performed after June 30, 1946, is 3 percent of wages up to $3,000 per year. Since nearly all fishermen in question receive income exceeding this figure, the burden placed on the industry will be about $2,700,000 per year, equalling about 1 percent of the total sales value of the industry, or 1½ percent of the value of the catch of the respective vessels.

These estimates do not make allowance for reductions of the tax rate based on experience ratings.

The States which permit experience ratings and which had laws covering services in the fishing industries prior to enactment of the new Federal Unemployment Insurance Law, are Connecticut, New York, New Jersey, Pennsylvania, Louisiana, Texas, California, Minnesota, Illinois, and Ohio. To comply with the new law, these States need only to have their respective unemployment compensation laws and the systems of applying the provisions to fishing services approved by the Social Security Administration in Washington, D. C. Employers in these States will continue to pay their contributions to the State unemployment insurance fund as they did previously, with the following modification: The State insurance law cannot decrease the minimum amount which must be paid into the United States Treasury as unemployment insurance tax. This minimum amount is 10 percent of the regular tax, or 0.3 percent of the taxable wages, regardless of the actual tax required by State law. The employer would have to pay 0.3 percent to the Federal Treasury; for example, if a State insurance law fixes the unemployment insurance tax at 3.1 percent, or if, on the other hand, a State, on the basis of an experience rating approved by the Social Security Administration, has established an unemployment tax of, for example, only 1.7 percent. In the latter case, if the experience rating were not approved by the Social Security Administration, the employer would have to pay the full 3 percent tax established by Federal law; namely, 1.7 percent to State funds and 1.3 percent going to the U. S. Treasury.

Some State laws contain clauses which provide that when Federal unemployment insurance is extended to cover new types of services, the provisions of the State unemployment insurance law become extended automatically. These States are Massachusetts, North Carolina, Florida, Alabama, Washington, Indiana, Michigan, and

Wisconsin. The Territory of Hawaii also provides for this automatic extension. In Delaware, according to information received from the Social Security Administration, the legal situation has not yet been clarified. Delaware law provides that the State Unemployment Compensation Commission shall be "directed" to enter into agreements with the proper agencies in those cases where additional services may be brought under the Federal unemployment compensation system. However, due to an adverse interpretation of the State law by the Commission, such an agreement has not yet been made with the U. S. Social Security Administration.

In other States, volunteer election of excluded services was and is possible. Even prior to August 10, 1946, members of the fishery industries in these States could ask to be included in the State unemployment insurance system. The States which permit volunteer election are Maine, New Hampshire, Rhode Island, Maryland, Virginia, South Carolina, Mississippi, and Oregon. Alaska, too, makes volunteer election possible. In Georgia, the Commissioner of the State Unemployment Insurance Fund may void exclusion by "rule and regulation." That means that in Georgia also, with the approval of the Commissioner, members of the fishery industries may apply for admission under the existing law. In the States just mentioned, no new legislation is necessary to bring the fishery industries under unemployment insurance. The only requirement is that the respective employers write to the State Board or to the Administrator of the State Unemployment Insurance Fund and request volunteer participation in the insurance system. The enactment of the new law makes such requests advisable for the following reason: If an employer does not request participation, he still must pay 3 percent unemployment insurance tax, but his employees receive no benefits from the insurance law. Consequently, it is in the interest of the industry that employers make application as soon as possible.

California and New York, as well as Louisiana, have had some experience with State unemployment insurance on fishery industries. Most of the difficulties which arose in these States have been administrative, according to reports. Vessels were either temporarily hired by employers in other States or were temporarily fishing in inland waters of other States or, for an entire season, fished in foreign waters. Complaints on behalf of the industry were mostly concerned with the fluctuation of personnel; with the frequent variations in pay, often depending on the duration of a voyage; and with the fact that, in many cases, the master of the vessel was not directly bound by the directions of the employer. If the master of a vessel himself decides when and where to go, there is some question as to whether he and his crew are under "employment." The characteristic of employment is always that the employer directs the work of his employees. In many cases of employment on fishery vessels this direction appears to be only slight or negligible.

There are numerous other difficulties in the administration of unemployment insurance. In some cases, union agreements provide for stand-by pay where a vessel is under repair or is delayed through accident or for other reasons. Is this stand-by pay compensation for work? Until now, the question has not been satisfactorily answered. Another provision in some union agreements requires that a certain percentage of the catch must be paid to a union employment insurance and welfare fund. Is this contribution now superseded by the Federal tax? The greatest complications, however, arise from the fact that courts in some cases have considered the relationship in the fishery industries as a sort of partnership or joint adventurer relationship.

Certainly, if the new law is to provide the beneficial effects intended by Congress, those who are called upon to administer it will require a high degree

of understanding with regard to fishing and the fishery industries, and a high degree of good-will from the fishery industry.

NOTICE OF CORRECTION

On page 4 of the September 1946 issue of Commercial Fisheries Review, in the article "Feeding Fish Meals to Pullets," by Hugo W. Nilson and Richard W. Schayer, paragraph 2 should be deleted and the following paragraph substituted for it:

The number of birds in this experiment is very small, but the results consistently showed that when 25 percent of the various fish meals was added to the ration no fishy or off flavors were evident in either the eggs or flesh. This means that the usual farm or commercial rations, which seldom contain more than 10 percent fish meal because of the relative cost of this ingredient, may be fed to poultry with the assurance that there will be no undesirable effects.