

2020

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Recommended Citation

Julia Fleming, *Washington's One-Size-Fits-All Unemployment Compensation Eligibility in Cases of Voluntary Separation*, 95 WASH. L. REV. ONLINE 277 (2020).

Available at: <https://digitalcommons.law.uw.edu/wlro/vol95/iss2/3>

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WASHINGTON'S ONE-SIZE-FITS-ALL UNEMPLOYMENT COMPENSATION ELIGIBILITY IN CASES OF VOLUNTARY SEPARATION

Julia Fleming*

Abstract: Washington State's Employment Security Act allows individuals who voluntarily left their jobs to be eligible for unemployment benefits if they quit their position with "good cause." In structuring this Act, the state's legislature has confined the definition of good cause to a one-size-fits-all list consisting of eleven circumstances. Consequently, if a situation arises that forces an individual to quit their job, yet does not fall into one of those eleven outlined circumstances, the Employment Security Department will disqualify the individual from receiving unemployment benefits. In comparison with other states' unemployment laws, Washington's system is quite limited, allowing no discretion under even the most compelling of circumstances. Such a statutory structure does not allow the state to truly effectuate the Act's purpose of both providing benefits to those "unemployed through no fault of their own" and "reducing involuntary unemployment and the suffering caused thereby to the minimum."¹ Therefore, Washington's legislature must act to alleviate this harm and grant individuals the unemployment benefits they deserve. In developing a solution, this Comment compares the good cause unemployment laws of Oregon, North Dakota, and Pennsylvania. Through this analysis, this Comment proposes that Washington repeal its exclusive good cause list and adopt a standard that defines "good cause" as cause of such a necessitous and compelling nature that would force a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, to leave their employment.

INTRODUCTION

The aim of federal and state unemployment compensation programs is twofold: counter recessions and alleviate hardships the unemployed face.² Society cannot downplay the advantages that unemployment benefits provide by countering the negative effects of recessions. Where jobs and wages are lost, money is pumped back into the economy to help stabilize

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1. WASH. REV. CODE § 50.01.010 (2020).

2. Deborah Maranville, *Unemployment Insurance Meets Globalization and the Modern Workforce*, 44 SANTA CLARA L. REV. 1129, 1133 (2004); HEATHER BOUSHEY & JORDAN EIZENGA, CTR. FOR AM. PROGRESS, TOWARD A STRONG UNEMPLOYMENT INSURANCE SYSTEM: THE CASE FOR AN EXPANDED FEDERAL ROLE 1 (2011) ("The purpose of the unemployment insurance system, as President Franklin D. Roosevelt noted upon signing the legislation into law, is both to alleviate hardships for the unemployed and to counter recessions.").

spending and the market flow as individuals search for work.³ During the Great Recession of 2008, unemployment compensation helped replace about one-fifth of the shortfall in the nation's gross domestic product (GDP).⁴ Additionally, society cannot discount the lifeboat that unemployment benefits serve for individuals struggling with job loss. Currently, millions of Americans depend on unemployment checks to keep them afloat as COVID-19 continues to plague the country and economy, forcing businesses to close and leaving workers stranded.⁵

America's unemployment insurance system, however, has failed to stay up to date with a changing labor force and economy.⁶ Prior to the COVID-19 pandemic that took hold of the country in 2020, unemployment benefit eligibility had become so limited that a mere one in four jobless workers received benefits.⁷ With little to no change to keep pace with the twenty-first century, most state programs remain unprepared for fluctuations in the economy, let alone a recession.⁸ America's historic period of economic expansion and prosperity after the Great Recession has come to a halt,⁹ and now is the time to take the necessary steps to update Washington's unemployment compensation laws.¹⁰ Therefore, the legislature must take preventive measures to protect the economy during recessions and working families from the hardships of unemployment.

The goal underlying unemployment benefits is to insure workers who become jobless "through *no fault of their own*," meaning that the employee is not to blame for their job loss.¹¹ Generally, an employee's unemployment is through no fault of their own if their employer discharged them absent any misconduct or they left their position with

3. BOUSHEY & EIZENGA, *supra* note 2, at 4–5.

4. *Id.* at 5.

5. *See infra* Part II.

6. RACHEL WEST, INDIVAR DUTTA-GUPTA, KALI GRANT, MELISSA BOTEACH, CLAIRE MCKENNA & JUDY CONTI, CTR. FOR AM. PROGRESS, WHERE STATES ARE AND WHERE THEY SHOULD BE ON UNEMPLOYMENT PROTECTIONS 1 (2016) [hereinafter WHERE STATES ARE].

7. RACHEL WEST, INDIVAR DUTTA-GUPTA, KALI GRANT, MELISSA BOTEACH, CLAIRE MCKENNA & JUDY CONTI, CTR. FOR AM. PROGRESS, STRENGTHENING UNEMPLOYMENT PROTECTIONS IN AMERICA: MODERNIZING UNEMPLOYMENT INSURANCE AND ESTABLISHING A JOBSEEKER'S ALLOWANCE 1 (2016) [hereinafter STRENGTHENING UNEMPLOYMENT PROTECTIONS IN AMERICA].

8. WHERE STATES ARE, *supra* note 6, at 1–2.

9. *Chart Book: Tracking the Post-Great Recession Economy*, CTR. ON BUDGET & POL'Y PRIORITIES (Oct. 8, 2020), <https://www.cbpp.org/research/economy/chart-tracking-the-post-great-recession-economy> [https://perma.cc/EL6U-SPDF] ("That expansion [following the Great Recession] continued into 2020, becoming the longest on record, but a sharp contraction in economic activity arising from COVID-19 ended it.").

10. *See* WHERE STATES ARE, *supra* note 6, at 9.

11. BOUSHEY & EIZENGA, *supra* note 2, at 1 (emphasis added).

“good cause.”¹² Standards for determining whether an employee quit with good cause vary from state to state.¹³ Absent a good cause finding, an individual considered at fault for their unemployment will be ineligible for benefits.¹⁴

In particular, Washington’s unemployment law—found in the Employment Security Act¹⁵—defines good cause in a way that is narrow and rule-based.¹⁶ Currently, the law lists eleven exclusive reasons that constitute good cause for an individual to leave their job.¹⁷ If a former employee left their job for a qualifying reason, they may be eligible for benefits. Conversely, individuals who leave their job for reasons not enumerated in the law are ineligible and disqualified from receiving unemployment benefits. An infinite number of situations can arise that would compel an employee to leave their job. By limiting the reasons that constitute good cause to a one-size-fits-all list, the state’s ability to grant benefits to employees who quit their job under otherwise compelling circumstances is restricted.

In turn, the limited good cause definition impedes Washington’s ability to effectuate the Employment Security Act’s purpose. The Act’s preamble states that unemployment compensation shall “be used for the benefit of persons unemployed through no fault of their own” to “reduc[e] involuntary unemployment and the suffering caused thereby to the minimum.”¹⁸ Circumstances frequently arise that compel individuals to leave their jobs. Oftentimes, however, these reasons do not constitute good cause under the current statutory scheme and thus disqualify individuals from benefits. With its exclusive good cause list, Washington does not provide benefits for all workers who become “unemployed

12. *Unemployment Benefits If You Quit Your Job*, EMP. SEC. DEP’T [hereinafter *If You Quit Your Job*], <https://esd.wa.gov/unemployment/quit> [<https://perma.cc/59ZM-TZ2L>]; *Were You Laid Off or Fired?*, EMP. SEC. DEP’T [hereinafter *Were You Laid Off or Fired?*], <https://esd.wa.gov/unemployment/laid-off-or-fired> [<https://perma.cc/HUE3-38WX>].

13. See WHERE STATES ARE, *supra* note 6, at 7–8; BOUSHEY & EIZENGA, *supra* note 2, at 6.

14. See WASH. REV. CODE § 50.20.050(2)(b) (2020); *If You Quit Your Job*, *supra* note 12.

15. WASH. REV. CODE §§ 50.01.005–.98.110.

16. See *id.* § 50.20.050.

17. *Id.* In Washington, employees have good cause to quit their job if: (1) they accepted another bona fide job offer; (2) they had to deal with their own illness or the illness or death of an immediate family member; (3) they relocated due to their spouse’s or domestic partner’s employment; (4) they had to protect themselves or an immediate family member from domestic violence; (5) their compensation was reduced by at least 25%; (6) their work hours were reduced by at least 25%; (7) their worksite location changed and greatly increased the distance of their commute; (8) their worksite safety deteriorated; (9) there were illegal activities at the workplace; (10) their work changed in a manner that violated the employee’s religious or moral beliefs; or (11) they entered an apprenticeship program approved by the state. *Id.* § 50.20.050(2)(b)(i)–(xi).

18. *Id.* § 50.01.010.

through no fault of their own.”¹⁹ To effectuate the law’s intent, Washington must extend unemployment benefits eligibility for individuals who voluntarily quit beyond the present enumerated reasons.

By comparing other states’ unemployment systems to Washington’s, this Comment proposes a standard-based good cause provision that would effectuate Washington’s intent to compensate its faultless workers. Part I begins by outlining the development of unemployment benefits both nationally and locally. Specifically, this Part provides background information on the unemployment benefits application process and describes the evolution of Washington’s good cause provision. Part II then explains the important role unemployment insurance plays as an economic buffer during recessions. Because of the COVID-19 pandemic and mandated business closures that have resulted, the country is witnessing first-hand the positive impact unemployment benefits have on individuals and families by helping to keep them on their feet. Next, Part III compares the voluntary separation laws of Oregon, North Dakota, and Pennsylvania to those of Washington. This Part compares specific cases from these other states to analogous Washington decisions to discern how different definitions of good cause produce varying results under similar factual circumstances.²⁰ Lastly, Part IV concludes by proposing a good cause standard the Washington legislature should adopt. This proposed standard would enable Washington to fulfill the purpose of its unemployment compensation laws and prepare for future economic fluctuations.

I. UNEMPLOYMENT COMPENSATION ON NATIONAL AND LOCAL LEVELS

America’s unemployment insurance system does not require the implementation of certain criteria that is uniform across all states regarding, for example, the amount of weekly benefits or the duration of benefit eligibility.²¹ Instead, states have tremendous flexibility to regulate their own standards of program eligibility and financing.²² Because unemployment insurance developed as a partnership between federal and state governments, both federal and state payroll taxes continue to fund

19. *Id.*

20. While no two cases present the same facts or situation, I attempted to find sufficiently similar cases to illustrate how different laws produce different eligibility determinations. However, I do not assert that a different standard would guarantee a different outcome in any case.

21. WHERE STATES ARE, *supra* note 6, at 2.

22. *Id.*

unemployment insurance to this day.²³ Although now accepted as an integral part of society, America's system of unemployment compensation endured a rather long and tumultuous journey in gaining national support.²⁴

A. *The Social Security Act of 1935*

America's interest in unemployment compensation began to grow in the early 1900s, shortly after Britain enacted its unemployment insurance act in 1911.²⁵ Throughout this period, instituting a national system of unemployment insurance did not garner immediate support from states or any traction to become part of the law.²⁶ Rather, interest in such a program fluctuated over time and was largely countercyclical to the economy's wellbeing, with interest growing in times of economic decline and diminishing in times of economic prosperity.²⁷

During the depression of 1914–1915, the outbreak of World War I triggered a global financial crisis as governments prepared for war and “imposed drastic controls to safeguard their banking system and national finances.”²⁸ In response, the national government created emergency commissions that supported the idea of a “nationwide and coordinated system of public employment offices.”²⁹ Even with the commissions' endorsement, however, calls for such a system went unanswered as the depression subsided and economic boom followed.³⁰

23. STRENGTHENING UNEMPLOYMENT PROTECTIONS IN AMERICA, *supra* note 7, at 72.

24. See Edwin E. Witte, *Development of Unemployment Compensation*, 55 YALE L.J. 21, 22–31 (1945).

25. *Id.* at 22. Although Britain's unemployment act provided a source that American scholars could analyze and study, discussions concerning unemployment insurance had already begun in the U.S. prior to 1911. *Id.* For example, at the American Association for Labor Legislation's (AALL) First Annual Meeting in 1907, “Professor Henry R. Seager of Columbia University discussed the ‘Ghent system’ of unemployment insurance,” a system in which trade unions—rather than the government—help to deliver welfare payments. *Id.*; DAVID MADLAND & MALKIE WALL, CTR. FOR AM. PROGRESS, AMERICAN GHENT: DESIGNING PROGRAMS TO STRENGTHEN UNIONS AND IMPROVE GOVERNMENT SERVICES 1 (2019).

26. Witte, *supra* note 24, at 22–23.

27. *Id.* Even main proponents of unemployment insurance, including the AALL, seemed to lose interest in such a program once periods of economic boom followed depression. *Id.* at 23.

28. Richard Roberts, *The Unknown Financial Crisis of 1914*, OUPBLOG (Nov. 25, 2013), <https://blog.oup.com/2013/11/unknown-financial-crisis-1914/> [<https://perma.cc/GY67-JJVJ>].

29. Witte, *supra* note 24, at 22–23. Together, the AALL and the American Association on Unemployment organized a National Conference on Unemployment. *Id.* at 22. At the conference's second annual meeting, a draft of “A Practical Program for the Prevention of Unemployment in America” was presented and endorsed; this particular program would later be supported by the emergency commissions in response to the 1914–1915 depression. *Id.* at 22–23.

30. *Id.* at 22–23.

Shortly thereafter, the brief but severe depression of 1920–1921 again reminded Americans of the suffering that results from high unemployment.³¹ This time, however, Americans “turned to remedies other than unemployment insurance.”³² Many business leaders pushed for individual corporations and trade associations to operate their own unemployment systems to avoid government involvement.³³ Eventually, many companies adopted their own unemployment reserve systems, either internally or through joint company-union programs.³⁴

As the Great Depression took hold of the country in October 1929, Americans could no longer ignore their need for a system of unemployment relief.³⁵ The national unemployment rate peaked in 1933 at 25.2% and did not fall below 15% for nearly the rest of the decade.³⁶ Many workers became chronically unemployed, remaining jobless for a year or more and being turned away from employers for reasons ranging from “skepticism about their skills to outright racism.”³⁷ Various legislative enactments during the New Deal era provided some individuals with work-relief programs, but most marginalized people—including older, nonwhite, and unskilled workers—continued to remain the most likely to be unemployed.³⁸

Finally, the federal government stepped in and enacted the Social Security Act of 1935.³⁹ With doubts that the Constitution would permit the national government to establish a system of unemployment insurance, Congress passed the Social Security Act and structured it specifically to induce individual states to adopt their own unemployment legislation.⁴⁰ At the time, the Social Security Act imposed a 3% excise payroll tax on employers with eight or more employees.⁴¹ However, employers could “offset their payments to state unemployment

31. *Id.* at 23.

32. *Id.*

33. *Id.* at 25.

34. *Id.* at 23.

35. *Id.* at 24; *Great Depression History*, HISTORY (Oct. 29, 2009), <https://www.history.com/topics/great-depression/great-depression-history> [<https://perma.cc/U7TW-RJ3V>].

36. Emily Toler, “Without Good Cause”: *The Case for a Standard-Based Approach to Determining Worker Qualification for Unemployment Benefits*, 89 WASH. L. REV. 559, 560 (2014).

37. *Id.*

38. *Id.* at 560–61.

39. Social Security Act of 1935, Pub. L. No. 74-271, 49 Stat. 620 (codified as amended at 42 U.S.C. §§ 301–1397mm). For more information concerning the numerous proposals that eventually led to the Social Security Act, as well as the importance of the timing in which the legislation was finally enacted, see Witte, *supra* note 24, at 28–31.

40. Witte, *supra* note 24, at 29.

41. *Id.* at 32.

compensation funds up to 90 percent of the total tax” as long as states enacted their own legislation.⁴² Ultimately, this “federal-state” system of unemployment compensation encouraged states to adopt and administer their own unemployment laws, collect unemployment compensation funds, and deposit these funds in the United States Treasury for investment in United States securities.⁴³

Thus, after a series of recessions and the Great Depression, Congress finally pushed national legislation through to ensure that local American needs would be met during times of unemployment. In response to the Social Security Act’s 1935 passage, nearly all states enacted unemployment compensation laws by 1936.⁴⁴ To top off the legislation’s success, the Supreme Court of the United States upheld as constitutional “both the unemployment compensation provisions of the Social Security Act and the state unemployment compensation laws.”⁴⁵

B. Washington’s Unemployment Compensation System and the Narrowing “Good Cause” Provision

Shortly after the passage of the Social Security Act, the Washington legislature passed the Unemployment Compensation Act (the Act) in 1937.⁴⁶ The Act characterized “economic insecurity due to unemployment” as a “serious menace to the health, morals and welfare of the people of this state.”⁴⁷ In the preamble, Washington’s legislature noted that the Act was to be “liberally construed for the purpose of reducing involuntary unemployment and the suffering caused thereby to the minimum.”⁴⁸ Moreover, the legislature endeavored to “remedy the widespread employment situation . . . and to set up safeguards to prevent its recurrence” through “the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.”⁴⁹

42. *Id.* Currently, the Federal Unemployment Tax Act (FUTA) is 0.6% and “is assessed on a taxable wage base equal to the first \$7,000 of an employee’s wages each year.” STRENGTHENING UNEMPLOYMENT PROTECTIONS IN AMERICA, *supra* note 7, at 73. For a more in-depth explanation of the joint funding by both states and the federal government, see *id.* 72–75.

43. Witte, *supra* note 24, at 32.

44. *Id.* at 33. Even prior to the Social Security Act’s enactment in 1935, six states had already passed unemployment compensation bills. *Id.*

45. *Id.* at 34 (discussing *Charles C. Steward Mach. Co. v. Davis*, 301 U.S. 548 (1937)).

46. Unemployment Compensation Act, ch. 162, 1937 Wash. Sess. Laws 574 (codified as amended at WASH. REV. CODE §§ 50.01.05–50.98.110 (2020)).

47. *Id.* ch. 162, § 2.

48. *Id.*

49. *Id.*

The Unemployment Compensation Act has undergone many changes since its enactment and is known today as the Employment Security Act.⁵⁰ The state's Employment Security Department (ESD) administers the Act.⁵¹ A commissioner, serving as the head of ESD, has the power and authority to adopt, amend, or rescind rules and regulations pursuant to the Act.⁵²

Current employees who experienced a reduction in their work hours⁵³ or former employees who quit their job⁵⁴ or were fired⁵⁵ may seek unemployment compensation.⁵⁶ These individuals, known as claimants, commence the process of seeking benefits by filing an application with ESD, which then issues a determination concerning the claimant's eligibility.⁵⁷ If a claimant is eligible, they may begin to receive unemployment benefits.⁵⁸ Conversely, if ESD denies a claim, the claimant may appeal the decision and request a hearing with an administrative law judge (ALJ).⁵⁹ After this hearing, which is usually held telephonically, the ALJ issues an order containing the ALJ's findings of fact, conclusions of law, and ultimate eligibility decision.⁶⁰

If a claimant is dissatisfied with the ALJ's order, they may file a petition for review with the Commissioner's Review Office.⁶¹ At this stage, a Review Judge thoroughly reviews the entire record, including all testimony and documentary evidence, and issues a written Decision of

50. WASH. REV. CODE § 50.01.005; *see also* Employment Security Act, ch. 8, § 24, 1953 Wash. Sess. Laws 2d Ex. Sess. 884, 904.

51. WASH. REV. CODE § 50.08.010.

52. *Id.*; *see also id.* § 50.12.010.

53. *See id.* § 50.20.050(2)(b)(vi).

54. *See id.* § 50.20.050; *If You Quit Your Job*, *supra* note 12.

55. *See* WASH. REV. CODE § 50.20.060; *Were You Laid Off or Fired?*, *supra* note 12.

56. *See generally* WASH. REV. CODE § 50.20.010.

57. *Id.* § 50.20.140; *see also Unemployment Benefits*, EMP. SEC. DEP'T, <https://esd.wa.gov/unemployment> [<https://perma.cc/A85A-NMMG>].

58. The employer has the opportunity to challenge an employee's claim for unemployment benefits, however. *See Dispute an Unemployment Benefits Claim*, EMP. SEC. DEP'T, <https://esd.wa.gov/about-employees/dispute-claim-filed> [<https://perma.cc/H3D3-H753>]. Employers generally challenge a former employee's grant of unemployment benefits because this will impact the employer's experience-based tax, which is one of two components that makes up the employer's state unemployment tax. *See Unemployment Tax Rates FAQ*, EMP. SEC. DEP'T, <https://esd.wa.gov/employer-taxes/tax-rate-faq> [<https://perma.cc/MA45-7EEU>].

59. *Benefit Denials and Appeals*, EMP. SEC. DEP'T, <https://esd.wa.gov/unemployment/benefit-denials-and-appeals> [<https://perma.cc/64U8-BRLR>].

60. *Id.*; *Commissioner's Review Office*, EMP. SEC. DEP'T [hereinafter *Commissioner's Review Office*], <https://esd.wa.gov/unemployment/commissioners-review-office> [<https://perma.cc/XD93-N6EP>].

61. *Commissioner's Review Office*, *supra* note 60.

Commissioner.⁶² If a claimant still does not receive a favorable outcome, they may petition the Washington State courts for further review.⁶³

Claimants must meet certain eligibility requirements to receive benefits.⁶⁴ For example, an individual must have worked at least 680 hours in the last year, be actively seeking employment, and be available to immediately accept any suitable work that is offered.⁶⁵ Additionally, a claimant will be ineligible if they “left work voluntarily without good cause.”⁶⁶

The “good cause” language concerning an individual’s voluntary separation has been present in Washington’s unemployment statute since the original Act in 1937.⁶⁷ Over time, the Act has undergone many significant changes, and the good cause disqualification and definition have become more limited with each modification.⁶⁸

In 1937, the original Act did not define good cause.⁶⁹ Absent explicit guidance, ESD and Washington courts had broad discretion to interpret this phrase and grant benefits to those they thought fit the qualification.⁷⁰

The legislature first amended the Act in 1945.⁷¹ The amendment directed ESD to consider a number of factors in determining whether a claimant had left work with good cause, such as “the degree of risk involved to [the claimant’s] health, safety and morals”; their “physical fitness and prior training”; and “such other factors as the [ESD]

62. *Id.*

63. *Id.*

64. WASH. REV. CODE § 50.20.010 (2020). An individual’s eligibility will require that they “have sufficient earnings history, [and] have paid into unemployment insurance via their employer’s payroll taxes.” STRENGTHENING UNEMPLOYMENT PROTECTIONS IN AMERICA, *supra* note 7, at 1.

65. WASH. REV. CODE § 50.20.010; *see also Basic Eligibility Requirements*, EMP. SEC. DEP’T, <https://esd.wa.gov/unemployment/basic-eligibility-requirements> [<https://perma.cc/59WT-LEKJ>]. Specifically, the Act requires a claimant to have worked at least 680 hours in their last “base year,” which is defined to mean “either the first four of the last five completed calendar quarters or the last four completed calendar quarters immediately preceding the first day of the individual’s benefit year.” WASH. REV. CODE § 50.04.020.

66. WASH. REV. CODE § 50.20.050 (noting disqualification for leaving work voluntarily without good cause).

67. *See Unemployment Compensation Act*, ch. 162, § 5(a), 1937 Wash. Sess. Laws 574, 580.

68. *See Toler, supra* note 36, at 569 (explaining that “as the legislature revised the statute, it consistently limited the circumstances that can constitute good cause and restricted administrative and judicial discretion to find it”). For a detailed analysis of Washington’s good cause provision throughout its evolution from a flexible, standard-based approach to its now limited, rule-based form, *see id.* at 569–89.

69. *Unemployment Compensation Act*, ch. 162, § 5(a).

70. *Toler, supra* note 36, at 569.

71. Act of Mar. 7, 1945, ch. 35, § 78, 1945 Wash. Sess. Laws 76, 116.

Commissioner may deem pertinent.”⁷² In particular, this “other factors”⁷³ provision gave the Commissioner discretion in considering additional extenuating factors that could account for good cause outside of the various factors outlined in the statute.⁷⁴ Under this version of the Act, good cause determinations were very “fact-specific and standard-based.”⁷⁵

In 1977, an additional amendment to the Act⁷⁶ added further situations constituting good cause for leaving a job, some of which codified previous commissioner decisions.⁷⁷ However, the amendment also allowed for the consideration of “other *work* connected factors,” which retained a degree of flexibility for the Commissioner’s and courts’ good cause determinations.⁷⁸ In maintaining a system of case-specific eligibility determinations rather than a set of concrete rules, the legislature ensured that ESD and Washington courts liberally construed the unemployment compensation laws, thereby effectuating the statute’s purpose.⁷⁹

As time progressed, the legislature continued to amend the Act.⁸⁰ With each amendment, the legislature added more situations to the definition of good cause,⁸¹ required claimants to prove additional facts under certain

72. *Id.*

73. *Id.*

74. Toler, *supra* note 36, at 570; *see, e.g.*, Judith L. Wright, No. 1173, 1974 WL 177542 (Emp. Sec. Comm’r Oct. 21, 1974) (finding good cause for voluntarily leaving work to preserve a relationship with children); William H. Haskins, No. 512, 1962 WL 76374 (Emp. Sec. Comm’r Aug. 30, 1962) (finding good cause for voluntarily leaving work to preserve a marriage in the face of divorce); *Matson v. Hutt*, 85 Wash. 2d 836, 539 P.2d 852 (1975) (finding good cause for voluntarily leaving work after a union decertification election rather than forfeiting health and pension benefits).

75. Toler, *supra* note 36, at 575.

76. Act of May 16, 1977, ch. 33, sec. 4, § 73, 1977 Wash. Sess. Laws 1st Ex. Sess. 229, 231 (codified as amended at WASH. REV. CODE §§ 50.20.050(1)(b), 50.20.050(2)(b) (2020)).

77. Toler, *supra* note 36, at 576.

78. Act of May 16, 1977, ch. 33, sec. 4(3) (emphasis added).

79. *See* Toler, *supra* note 36, at 576–77. Standard-based systems, in contrast with rules, “promote flexibility, [and] individualization,” while liberal construction “gives a statute more elbow room for the sake of achieving statutory purposes and goals.” *Id.* at 599 (quoting Morell E. Mullins, Sr., *Coming to Terms with Strict and Liberal Construction*, 64 ALB. L. REV. 9, 38 (2000)). As a result, individualized eligibility determinations “allow the kind of flexibility that . . . more effectively advance[s] the purpose of the [Employment Security] Act and unemployment compensation generally.” *Id.*

80. The legislature amended the Act in 1980, throughout 1981 and 1982, and again in 1993, 2000, and 2002. *See* Toler, *supra* note 36, at 580–83.

81. For example, in 1980, the legislature added a provision allowing for the death of an immediate family member to constitute good cause. Act of Mar. 6, 1980, ch. 74, sec. 5(2)(b), 1980 Wash. Sess. Laws 170, 174 (codified as amended at WASH. REV. CODE §§ 50.20.050(1)(b)(ii), 50.20.050(2)(b)(ii)).

provisions,⁸² and continued the “trend of limiting discretion.”⁸³ By the early 2000s, Washington’s good cause framework was “well established.”⁸⁴ Division I of the Court of Appeals succinctly recited the good cause framework during this period when it explained:

To have good cause for severing employment so as to be eligible for benefits, an employee must leave work primarily because of work-connected factors of such compelling nature as to cause a reasonably prudent person to leave, after exhausting all reasonable, non-futile alternatives. The commissioner must consider only work-related factors brought about by the employer.⁸⁵

In 2003, the legislature enacted “a major revision” to Washington’s unemployment compensation laws, thereby disrupting ESD’s and the courts’ prior discretion.⁸⁶ Around this time, many large Washington employers like Boeing were threatening to leave the state.⁸⁷ These employers complained of Washington’s unfriendly business climate involving “high business and occupation taxes, high unemployment taxes, and a congested transportation system.”⁸⁸ As a result, “many legislators were prepared to pass whatever legislation business demanded,” which consequently led to a more employer-friendly good cause provision.⁸⁹

Among the amendment’s changes included a specified list of ten situations that would provide an individual with good cause to leave work.⁹⁰ During this period, an individual would have good cause to voluntarily leave work: (1) to “accept a bona fide offer of bona fide work”;⁹¹ (2) due to “the illness or disability of the claimant or the death,

82. For example, the 1981 amendments added a list of factors to consider in determining whether work obtained is “of a bona fide nature,” Act of Apr. 20, 1981, ch. 35, sec. 4(1)(a)–(c), 1981 Wash. Sess. Laws 132, 135–36 (codified as amended at WASH. REV. CODE §§ 50.20.050(1)(a)(i)–(iii), 50.20.050(2)(b)(i)–(iii)), and the 2000 amendments required a claimant who quit to relocate with their spouse to prove that the spouse’s relocation was “due to an employer-initiated mandatory transfer,” Act of Feb. 7, 2000, ch. 2, sec. 12(2)(c), 2000 Wash. Sess. Laws 16, 17.

83. Toler, *supra* note 36, at 581.

84. *Id.* at 583.

85. *Emps. of Intalco Aluminum Corp. v. Emp. Sec. Dep’t*, 128 Wash. App. 121, 130, 114 P.3d 675, 680 (2005) (footnote omitted).

86. Toler, *supra* note 36, at 583; *see also* Act of June 20, 2003, ch. 4, 2003 Wash. Sess. Laws 2d Spec. Sess. 2782 (codified as amended in scattered sections of WASH. REV. CODE §§ 50.01.05–50.98.110).

87. Toler, *supra* note 36, at 583, n.222.

88. Maranville, *supra* note 2, at 1140.

89. *Id.*

90. Act of June 20, 2003, sec. 4.

91. *Id.* at sec. 4(2)(b)(i).

illness, or disability of a member of the claimant’s immediate family”;⁹² (3) to “relocate for the spouse’s employment . . . due to a mandatory military transfer”;⁹³ (4) to “protect the claimant or the claimant’s immediate family members from domestic violence . . . or stalking”;⁹⁴ (5) because “[t]he individual’s usual compensation was reduced by twenty-five percent or more”;⁹⁵ (6) because “[t]he individual’s usual hours were reduced by twenty-five percent or more”;⁹⁶ (7) because “[t]he individual’s worksite changed, [and] such change caused a material increase in distance or difficulty of travel”;⁹⁷ (8) because “[t]he individual’s worksite safety deteriorated”;⁹⁸ (9) due to “illegal activities in the individual’s worksite”;⁹⁹ or (10) because “[t]he individual’s usual work was changed to work that violates the individual’s religious convictions or sincere moral beliefs.”¹⁰⁰

One question that soon arose, however, was whether the new list of good cause situations was exhaustive.¹⁰¹ First to address this question on appeal was Division II of the Court of Appeals in the 2005 case *Starr v. Employment Security Department*.¹⁰² Here, the court held that the amended Act “provide[d] the *exclusive* list of good cause reasons for voluntarily quitting employment that will not disqualify a claimant from receiving unemployment compensation benefits.”¹⁰³ Notably, the Washington State Supreme Court denied Starr’s petition for review.¹⁰⁴

In 2008, however, the Washington State Supreme Court overruled *Starr*’s previous holding concerning the list’s exclusivity when reviewing

92. *Id.* at sec. 4(2)(b)(ii).

93. *Id.* at sec. 4(2)(b)(iii).

94. *Id.* at sec. 4(2)(b)(iv).

95. *Id.* at sec. 4(2)(b)(v).

96. *Id.* at sec. 4(2)(b)(vi).

97. *Id.* at sec. 4(2)(b)(vii).

98. *Id.* at sec. 4(2)(b)(viii).

99. *Id.* at sec. 4(2)(b)(ix).

100. *Id.* at sec. 4(2)(b)(x). The eleventh reason that would be added in 2009 allowed for good cause when “[t]he individual left work to enter an apprenticeship program approved by the Washington state apprenticeship training council.” Act of May 18, 2009, ch. 493, sec 3(1)(b)(xi), (2)(b)(xi), 2009 Wash. Sess. Laws 21, 23 (codified as amended at WASH. REV. CODE §§ 50.20.050(1)(b)(xi), 50.20.050(2)(b)(xi) (2020)).

101. Toler, *supra* note 36, at 584.

102. 130 Wash. App. 541, 123 P.3d 513 (2005).

103. *Id.* at 551, 123 P.3d at 519 (emphasis added) (denying Starr unemployment benefits because his voluntary job separation in order to travel to Alaska to take custody of his grandchildren after their mother—Starr’s daughter—was incarcerated did not fall within the statute’s exclusive list of good cause reasons).

104. *Starr v. Emp. Sec. Dep’t*, 157 Wash. 2d 1019, 142 P.2d 607 (2006) (denying petition for review).

Spain v. Employment Security Department.¹⁰⁵ The Court noted that because the Act’s good cause provision was “not a model of clarity,” each interpretation regarding its exclusivity was reasonable.¹⁰⁶ Nevertheless, the Court based its holding on the “words of the statute itself” that indicated a “difference in legislative intent” and led the Court to believe the legislature had intended the list to be non-exclusive.¹⁰⁷

The Court’s ruling did not last long, however. A little over a year after the Court’s *Spain* holding, the legislature swiftly responded by passing Senate Bill 5963.¹⁰⁸ The 2009 amendment specified “that the reasons enumerated in the statute were the *only* reasons that could constitute good cause for leaving work.”¹⁰⁹

Currently, the Act closely resembles its 2003 version. Per the Act, an individual “has good cause and is not disqualified from benefits”¹¹⁰ when at least one of the eleven situations is present: (1) a claimant “left work to accept a bona fide offer of bona fide work”;¹¹¹ (2) “[t]he separation was necessary because of the illness or disability of the claimant or the death, illness, or disability of a member of the claimant’s immediate family”;¹¹² (3) a claimant has “[l]eft work to relocate for the employment of a spouse or domestic partner”;¹¹³ (4) “[t]he separation was necessary to protect the claimant or the claimant’s immediate family members from domestic violence . . . or stalking”;¹¹⁴ (5) “[t]he individual’s usual compensation was reduced by twenty-five percent or more”;¹¹⁵ (6) “[t]he individual’s hours were reduced by twenty-five percent or more”;¹¹⁶ (7) a change in the individual’s worksite “caused a material increase in distance or

105. 164 Wash. 2d 252, 185 P.3d 1188 (2008).

106. *Id.* at 257, 185 P.3d at 1190.

107. *Id.* at 259, 185 P.3d at 1192. In particular, the Court looked to the two key terms of “good cause” and “disqualified,” and recognized that it is an “elementary rule that where the Legislature uses certain statutory language in one instance, and different language in another, there is a difference in legislative intent.” *Id.* Finding that “[s]uch different language is used here,” the Court stated “that the statutory list of nondisqualifying reasons for voluntarily leaving a job does not do double duty as an exclusive list of good cause reasons to leave a job.” *Id.* at 259–60, 1185 P.2d at 1191.

108. Substitute S.B. 5963, 61st Leg., Reg. Sess. (Wash. 2009).

109. Toler, *supra* note 36, at 588 (emphasis in original); see Substitute S.B. 5963, sec. 3(2)(a) (codified as amended at WASH. REV. CODE § 50.20.050(2)(a) (2020)) (“Good cause reasons to leave work are limited to reasons listed in (b) of this subsection.”).

110. WASH. REV. CODE § 50.20.050(2)(b).

111. *Id.* § 50.20.050(2)(b)(i).

112. *Id.* § 50.20.050(2)(b)(ii).

113. *Id.* § 50.20.050(2)(b)(iii).

114. *Id.* § 50.20.050(2)(b)(iv).

115. *Id.* § 50.20.050(2)(b)(v).

116. *Id.* § 50.20.050(2)(b)(vi).

difficulty of travel”;¹¹⁷ (8) “[t]he individual’s worksite safety deteriorated”;¹¹⁸ (9) a claimant left because of “illegal activities in the individual’s worksite”;¹¹⁹ (10) “[t]he individual’s usual work was changed to work that violates the individual’s religious convictions or sincere moral beliefs”;¹²⁰ or (11) “[t]he individual left work to enter [a state-approved] apprenticeship program.”¹²¹ Thus, ESD may deem claimants eligible for unemployment benefits after their voluntary resignation only if one of the aforementioned situations led to their job loss. Employees who leave their employment for other compelling reasons—ones that would force any reasonable person to quit, yet do not appear in the one-size-fits-all list of good cause situations—are consequently ineligible for unemployment benefits. With no discretion to account for other extenuating or compelling situations, ESD and Washington courts are unable to effectuate the statute’s purpose of awarding benefits to individuals “unemployed through no fault of their own.”¹²²

II. UNEMPLOYMENT COMPENSATION’S ECONOMIC ROLE DURING RECESSIONS AND IN THE FACE OF COVID-19

Since its development during the Great Depression, unemployment insurance has served as a “bedrock of the nation’s social insurance system” and remained “an essential ingredient for economic security, shared prosperity, and a stable economy.”¹²³ Leading up to 2020, American unemployment systems were not at the forefront of the nation’s mind or the topic of intense national discussion.¹²⁴ This would soon change, however, and it would be too late for those unemployment systems in dire need of an update to be prepared for what would come.¹²⁵

At the beginning of 2020, the national unemployment rate hovered at

117. *Id.* § 50.20.050(2)(vii).

118. *Id.* § 50.20.050(2)(viii).

119. *Id.* § 50.20.050(2)(ix).

120. *Id.* § 50.20.050(2)(x).

121. *Id.* § 50.20.050(2)(xi).

122. *Id.* § 50.01.010.

123. *WHERE STATES ARE*, *supra* note 6, at 1.

124. *See generally* Alan Greenblatt, David Kidd & Tod Newcombe, *The Biggest Issues to Watch in 2020*, *GOVERNING* (Jan. 13, 2020), <https://www.governing.com/next/The-Biggest-Issues-to-Watch-in-2020.html> [<https://perma.cc/N45Y-3KLW>] (listing some of the biggest problems to watch for in 2020, among others, as abortion, climate, election security, net neutrality, and recession fears).

125. *See* *WHERE STATES ARE*, *supra* note 6, at 1.

some of its lowest rates in the post-World War II era¹²⁶—around 3.6% and 3.5% in January and February of 2020, respectively.¹²⁷ The economy had been experiencing a period of historic expansion and passed a record-setting time of ten years without undergoing a recession.¹²⁸

Such a period of growth and economic prosperity inevitably could not last forever, but the world did not foresee the reason for the downward spiral that would strike in early 2020. In March, the World Health Organization (WHO) characterized the global outbreak of COVID-19, the disease caused by a novel coronavirus, as a pandemic.¹²⁹ Soon after, President Trump declared a state of national emergency¹³⁰ as the country's unemployment rate slowly increased to 4.4%.¹³¹ While businesses nationwide were forced to close their doors, the unemployment rate skyrocketed in April and hit 14.7% with just over twenty-three million people unemployed.¹³² With mandates that many industries remain closed or resume only limited operations, the unemployment rate failed to drop quickly or significantly after April; the U.S. Department of Labor reported national unemployment rates of 13.3%¹³³ and 11.1%¹³⁴ in May and June, respectively. In Washington, the state unemployment rate peaked at 15.1% in May¹³⁵ and diminished to 9.8% in June.¹³⁶

126. Rakesh Kochhar, *Unemployment Rose Higher in Three Months of COVID-19 than It Did in Two Years of the Great Recession*, PEW RSCH. CTR.: FACT TANK (June 11, 2020), <https://www.pewresearch.org/fact-tank/2020/06/11/unemployment-rose-higher-in-three-months-of-covid-19-than-it-did-in-two-years-of-the-great-recession/> [<https://perma.cc/UCR8-SYFA>].

127. BUREAU OF LAB. STAT., U.S. DEP'T OF LAB., PUB. NO. USDL-20-0521, THE EMPLOYMENT SITUATION—MARCH 2020, at 6 tbl.A (2020) [hereinafter MARCH 2020 EMPLOYMENT SITUATION].

128. WHERE STATES ARE, *supra* note 6, at 1; Janna Herron, *A Decade After the Big One, What Kind of Recession Will We Have Next?*, USA TODAY (Aug. 19, 2019, 9:52 AM), <https://www.usatoday.com/story/money/2019/08/19/recession-what-does-mean-and-what-like/2030642001/> [<https://perma.cc/W26D-NPY8>].

129. WHO Characterizes COVID-19 as a Pandemic, *Post on Rolling Updates on Coronavirus Disease (COVID-19)*, WORLD HEALTH ORG. (Mar. 11, 2020), <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen> [<https://perma.cc/8ALQ-GSGV>]. Even as early as January 30, 2020, the WHO had declared the outbreak a “public health emergency of international concern,” which is the “highest level of alarm under international law.” *Id.*

130. Derrick Bryson Taylor, *A Timeline of the Coronavirus Pandemic*, N.Y. TIMES (Aug. 6, 2020), <https://www.nytimes.com/article/coronavirus-timeline.html> [<https://perma.cc/R7K-HJR4>].

131. MARCH 2020 EMPLOYMENT SITUATION, *supra* note 127, at 6 tbl.A.

132. BUREAU OF LAB. STAT., U.S. DEP'T OF LAB., PUB. NO. USDL-20-0815, THE EMPLOYMENT SITUATION—APRIL 2020, at 7 tbl.A (2020).

133. BUREAU OF LAB. STAT., U.S. DEP'T OF LAB., PUB. NO. USDL-20-1140, THE EMPLOYMENT SITUATION—MAY 2020, at 7 tbl.A (2020).

134. BUREAU OF LAB. STAT., U.S. DEP'T OF LAB., PUB. NO. USDL-20-1310, THE EMPLOYMENT SITUATION—JUNE 2020, at 7 tbl.A (2020).

135. EMP. SEC. DEP'T, MONTHLY EMPLOYMENT REPORT: JUNE 2020, at 1 (2020).

136. EMP. SEC. DEP'T, ESD FACTS & FIGURES: JULY 2020 (2020).

Given the federal economic stimulus check and millions of Americans filing for unemployment benefits for the first time, the importance of spending to stimulate and stabilize an economy may sound familiar.¹³⁷ In times of economic downturn, unemployment compensation helps stabilize the economy by putting money into the hands of struggling families, which in turn creates demand in the local and national markets.¹³⁸ Because unemployment benefits are typically spent rather than saved, this money helps fill the gap in overall consumption resulting from high unemployment rates.¹³⁹

Even had the COVID-19 pandemic not occurred, many states were due to update their unemployment insurance systems.¹⁴⁰ State policy decisions have cut deep into benefit eligibility and consequently restricted unemployment compensation's capacity as an automatic macroeconomic stabilizer.¹⁴¹ Moreover, the nation has both failed to sufficiently invest in unemployment insurance and update this vital system to keep pace with the twenty-first century.¹⁴² As a result, unemployment insurance's reach within the workforce today is limited.¹⁴³ In 2015, only 27.2% of unemployed workers nationwide were receiving benefits—a historic low.¹⁴⁴ The COVID-19 pandemic and related economic downturn have thus emphasized the preexisting, critical need for expanding eligibility requirements for unemployment benefits.

Expanding benefit eligibility is not a simple task, however.¹⁴⁵ Eligibility generally stems from an individual becoming unemployed through no fault of their own.¹⁴⁶ This “no fault rule” exists primarily to prevent moral hazard,¹⁴⁷ or “the concept that individuals have incentives to alter their behaviour when their risk or bad-decision making is borne

137. *Stimulus Check*, CORP. FIN. INST., <https://corporatefinanceinstitute.com/resources/knowledge/economics/stimulus-check/> [https://perma.cc/N75X-8AJE]; see also *U.S. Department of Labor Announces New Cares Act Guidance on Unemployment Insurance for States in Response to COVID-19 Crisis*, U.S. DEP'T OF LAB. (Apr. 2, 2020), <https://www.dol.gov/newsroom/releases/eta20200402-0> [https://perma.cc/BS7D-QSJK].

138. WHERE STATES ARE, *supra* note 6, at 1.

139. BOUSHEY & EIZENGA, *supra* note 2, at 4.

140. WHERE STATES ARE, *supra* note 6, at 1.

141. STRENGTHENING UNEMPLOYMENT PROTECTIONS IN AMERICA, *supra* note 7, at 3–4.

142. *Id.* at 1.

143. *Id.* at 39.

144. *Id.*

145. BOUSHEY & EIZENGA, *supra* note 2, at 9.

146. STRENGTHENING UNEMPLOYMENT PROTECTIONS IN AMERICA, *supra* note 7, at 37.

147. *Id.*

by others.”¹⁴⁸ The idea is that unemployment benefits may induce individuals to leave their jobs unnecessarily and allow them to still receive wages.¹⁴⁹ Such perverse incentives would consequently usher in “higher and potentially unsustainable program costs and undermin[e] the [unemployment compensation system]’s primary role as insurance.”¹⁵⁰

As a result, unemployment eligibility requirements must operate in a way that incentivizes employees to remain attached to their job. Research suggests that current unemployment insurance systems “fall[] far short of producing significant negative moral hazard consequences,”¹⁵¹ so expanding benefit eligibility with limitations in place will not increase the risk of individuals abusing the unemployment insurance system. Moreover, different states have developed unemployment compensation systems that provide the necessary benefits while still minimizing the risks associated with moral hazard.¹⁵² Consequently, comparative analysis of these programs is useful to identify the flaws of Washington’s approach as well as evaluate potential solutions to remedy any perverse incentives.

III. STATE UNEMPLOYMENT COMPENSATION COMPARISON: OREGON, NORTH DAKOTA, AND PENNSYLVANIA VERSUS WASHINGTON

Because the Social Security Act does not mandate that all states’ unemployment compensation systems operate in the same manner, states enjoy freedom in defining benefit eligibility.¹⁵³ As a result, this variation provides a unique opportunity in which to analyze the operation of Washington’s eligibility criteria.¹⁵⁴ Comparing voluntary separation circumstances under other state laws can thus highlight both how Washington’s current system produces its eligibility decisions and how other systems may achieve different desired results.

Accordingly, this Comment compares the unemployment compensation systems of three states—Oregon, North Dakota, and

148. Tejvan Pettinger, *Moral Hazard*, ECON. HELP (Nov. 6, 2019), <https://www.economicshelp.org/blog/105/economics/what-is-moral-hazard/> [<https://perma.cc/LZ8B-VSB8>].

149. STRENGTHENING UNEMPLOYMENT PROTECTIONS IN AMERICA, *supra* note 7, at 37.

150. *Id.*

151. *Id.* at 54.

152. *See, e.g., infra* text accompanying notes 225–229 (discussing the limitations placed on North Dakota’s unemployment benefits eligibility, which in turn protect against moral hazard).

153. *See* Witte, *supra* note 24, at 29–30; BOUSHEY & EIZENGA, *supra* note 2, at 6.

154. For a table indicating which states’ laws utilize certain good cause provisions, see WHERE STATES ARE, *supra* note 6, at 7–8.

Pennsylvania—to the Washington system.¹⁵⁵ After examining state-by-state data on unemployment eligibility, criteria, and reciprocity rates, or the percentage of unemployed individuals receiving benefits,¹⁵⁶ I selected Oregon, North Dakota, and Pennsylvania as comparators for several reasons.

First, I sought to sample a state with a similar geographic region as Washington. Geographical regions may experience similar employment practices as well as geographical unemployment rates.¹⁵⁷ These concepts justified the selection of Washington’s Pacific Northwest neighbor, Oregon.

Second, I selected a state with an outlier reciprocity rate. North Dakota’s reciprocity rate stands out because it far exceeds the national average: whereas the national reciprocity rate hovers around 28%, an impressive 70% of North Dakota jobless workers receive unemployment benefits.¹⁵⁸ While the state’s eligibility standards may not be the sole reason its reciprocity rates are unusually high, this statistic nevertheless stands out. A high reciprocity rate may be advantageous by placing money into the hands of more individuals to support the local economy, or such a rate could be disadvantageous based on the associated risk of moral hazard. Therefore, North Dakota’s outlier reciprocity rate supported further exploration.

Third, I sought to compare a state with a standard-based good cause determination, in comparison with Washington’s rule-based system. While both Oregon and North Dakota also present a standard-based approach, Pennsylvania’s unemployment statute has been recognized as “remarkable in a number of respects,” specifically given the “broad flexibility of its voluntary quits provision” and protection of care-giving workers from biased agency assumptions.¹⁵⁹ Thus, Pennsylvania stood out as a good candidate for comparison with Washington’s relatively restrictive, rule-based system.

155. While a wider state comparison could provide a more holistic proposal for Washington’s good cause provision, such an analysis is outside the scope of this Comment.

156. STRENGTHENING UNEMPLOYMENT PROTECTIONS IN AMERICA, *supra* note 7, at 39.

157. See Tejvan Pettinger, *Geographical Unemployment*, ECON. HELP (Feb. 3, 2020), <https://www.economicshelp.org/blog/1416/unemployment/geographical-unemployment/> [<https://perma.cc/RED3-XJAJ>] (explaining that geographical unemployment can result from labor immobility or the decline of a regional industry).

158. WHERE STATES ARE, *supra* note 6, at 11–12.

159. Carolyn McConnell, *No Fault of Her Own: Redressing Family Responsibilities Discrimination in the State Unemployment Compensation Systems*, 62 LAB. L.J. 120, 126, 129 (2011).

A. *Oregon's Unemployment Insurance for Voluntary Resignations*

Under Oregon's Employment Department Law,¹⁶⁰ an individual will be disqualified from receiving unemployment benefits if they "[v]oluntarily left work without good cause."¹⁶¹ Although the statute does not explain what constitutes "good cause,"¹⁶² Oregon's Employment Department has defined the phrase to mean a reason that would drive "a reasonable and prudent person of normal sensitivity, exercising ordinary common sense . . . [to] leave work."¹⁶³ Moreover, the reason for the employee's voluntary resignation "must be of such gravity that the individual ha[d] no reasonable alternative but to leave work."¹⁶⁴ Unlike the Washington scheme—which outlines the exclusive reasons that constitute good cause—Oregon's code specifies what does *not* constitute good cause. Leaving work *without* good cause in Oregon may include, but is not limited to:

- (A) Leaving suitable work to seek other work;
- (B) Leaving work rather than paying union membership dues;
- (C) Refusing to join a bona fide labor organization when membership therein was a condition of employment;
- (D) Leaving to attend school, unless required by law;
- (E) Willful or wantonly negligent failure to maintain a license . . . necessary to the performance of the occupation involved . . . ;
- (F) Resignation to avoid what would otherwise be a discharge for misconduct or potential discharge for misconduct; [or]
- (G) Leaving work for self employment.¹⁶⁵

Thus, workers will be ineligible for benefits if they leave work for one of these reasons or another that Oregon's Employment Department does not consider to be good cause.¹⁶⁶

Provisions also guide good cause determinations when an individual

160. OR. REV. STAT. § 657.005 (2020).

161. *Id.* § 657.176(2)(c).

162. *Id.*

163. OR. ADMIN. R. 471-030-0038(4) (2020). "For an individual with a permanent or long-term 'physical or mental impairment' . . . good cause for voluntarily leaving work is such that a reasonable and prudent person with the characteristics and qualities of such individual, would leave work." *Id.*

164. *Id.* Section 5(f) of the relevant Oregon Administrative Rule provides for situations, however, "[w]here the gravity of the situation experienced by the individual results from his or her own deliberate actions." *Id.* at R. 471-030-0038(5)(f).

165. *Id.* at R. 471-030-0038(5)(b)(A)–(G).

166. *Id.*

voluntarily leaves employment “while on layoff status,”¹⁶⁷ due to a “reduction in the rate of pay,”¹⁶⁸ or due to a “reduction in hours.”¹⁶⁹ Further, Oregon law provides that “good cause includes, but is not limited to . . . compelling family reasons.”¹⁷⁰

Overall, Oregon’s unemployment laws utilize a reasonable person standard to determine when an individual voluntarily quits with good cause.¹⁷¹ Specifically, this objective standard inquires “whether a ‘reasonable and prudent person’ would consider the situation so grave that he or she had no reasonable alternative to quitting.”¹⁷²

Unlike most other states, Oregon’s laws do not explicitly require an individual’s reason or cause of leaving employment to be related to their work. Instead, an employee may quit work “due to purely personal grave circumstances and not be disqualified from receiving benefits.”¹⁷³ Whether personal reasons constitute good cause in any situation is left as “a value judgment whose completion the legislature has entrusted to the [Employment] Division.”¹⁷⁴ Consequently, good cause does not exclude personal reasons as long as they are “of sufficient gravity.”¹⁷⁵ Therefore, both personal and job-related reasons “constitute ‘good cause’ if they are ‘such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work.’”¹⁷⁶

Nevertheless, Oregon’s requirement that there be “no reasonable alternative but to leave work”¹⁷⁷ limits employees’ ability to voluntarily quit and receive unemployment benefits. For example, in *Young v. Employment Department*,¹⁷⁸ the Oregon Court of Appeals found that a claimant who suffered an on-the-job injury requiring surgery lacked good cause because reasonable alternatives to resigning had existed.¹⁷⁹ In

167. *Id.* at R. 471-030-0038(5)(c).

168. *Id.* at R. 471-030-0038(5)(d).

169. *Id.* at R. 471-030-0038(5)(e).

170. *Id.* at R. 471-030-0038(5)(g).

171. *McDowell v. Emp. Dep’t*, 236 P.3d 722, 726 (Or. 2010).

172. *Id.*; see also Perkins Coie, *In Oregon, Quitters Sometimes Win*, 18 OR. EMP. L. LETTER 1, 1 (2011).

173. EAB Decision 2015-EAB-0876 (Aug. 24, 2015).

174. *Sothras v. Emp. Div.*, 616 P.2d 524, 526 (Or. Ct. App. 1980); *Robb v. Emp. Div.*, 635 P.2d 392, 393 (Or. Ct. App. 1981) (explaining that *Sothras* stands for the principle that “the Employment Division may consider personal, non-job related problems in determining if an employee has ‘good cause’ for leaving his or her employment”).

175. *Sothras*, 616 P.2d at 527.

176. *Id.*

177. *Id.*

178. 13 P.3d 1027 (Or. Ct. App. 2000).

179. *Id.*

particular, the claimant failed to prove that “she would have been physically unable to return to her employment within a reasonable period of time,” “that there was no position for her to return to,” or that remaining on medical leave while receiving manager bonuses and medical benefits was “an unreasonable alternative.”¹⁸⁰ As a result, Oregon’s system limits the risk of moral hazard by requiring claimants to exhaust all possible options prior to quitting.

1. *Case Comparison: Oregon vs. Washington*

Oregon and Washington serve as great comparators considering that their regional proximity may lend itself to similar employment practices and geographical unemployment rates. To illustrate how Oregon’s reasonable person standard in the voluntary separation context compares to Washington’s exclusive good cause list, it is helpful to compare the varying results of similar situations experienced in each state.

a. *Oregon’s Jane Doe Decision*

In August 2015, the Oregon Employment Appeals Board (EAB)¹⁸¹ issued a decision allowing a worker to collect unemployment benefits after a stressful yet reasonable move to another city.¹⁸² Jane Doe worked and resided in Portland, Oregon.¹⁸³ In March 2015, she became engaged to her fiancé who lived in Long Beach, Washington.¹⁸⁴ Around this same time, Jane began living part-time in Long Beach with her fiancé and commuting roughly three hours each way to work in Portland several times a week.¹⁸⁵ Because Jane could “not commute every day,” she continued maintaining a second home in the Portland area.¹⁸⁶

Soon, Jane began experiencing exhaustion and stress as a result of the commute and distance from her fiancé; the long distance in particular “began creating serious financial, emotional, and familial relationship issues.”¹⁸⁷ At the end of April 2015, Jane decided to quit her job and live

180. *Id.* at 1029–30.

181. Oregon’s EAB is situated in the same position as the Washington Commissioner’s Review Office, in that the EAB has the power to review challenged unemployment claims. *See* OR. REV. STAT. § 657.685 (2020).

182. EAB Decision 2015-EAB-0876 (Or. Aug. 24, 2015). Because this decision does not provide names, I will refer to this claimant as Jane Doe.

183. *Id.* at 2.

184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.*

with her fiancé full-time in Long Beach, Washington.¹⁸⁸ Because Jane’s fiancé had held a government job for the past seventeen years, earned a higher income, and received employer-paid retirement and other benefits, it “made more sense” for Jane to leave her lower-wage, administrative assistant position in Portland.¹⁸⁹ Shortly after moving to Long Beach and filing for unemployment benefits in Oregon, the Employment Department found Jane ineligible and denied her application for benefits.¹⁹⁰

On review, an ALJ affirmed the denial of Jane’s benefits.¹⁹¹ In particular, the ALJ concluded that Jane had quit work without good cause because the circumstances that drove her to quit were not “compelling family reasons,” she enjoyed her job, and did not face a grave situation at work.¹⁹²

When reviewing the denial, however, the EAB set aside the ALJ’s decision, finding that Jane had voluntarily left work *with* good cause in order “to preserve her relationship with her fiancé.”¹⁹³ After attempting to “retain her employment and relationship without moving to a location from which commuting was impracticable,” the strain that maintaining Jane’s employment placed on her relationship became too great.¹⁹⁴ Specifically, the EAB determined that:

No reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would continue working at a job that required her to maintain the expense of two households, commute up to three hours each direction to travel to work, and create “serious financial, emotional and familial relationship issues,” such that continuing to work jeopardized the relationship.¹⁹⁵

Jane’s situation did not fit neatly within Oregon’s “compelling family

188. *Id.*

189. *Id.*

190. *Id.*

191. *Id.* at 1.

192. *Id.* at 3. Jane’s job separation was technically determined to be a discharge; this is because after Jane orally notified and emailed her employer her two weeks’ notice of intent to resign, her employer terminated Jane’s position that same day and did not allow her to work through the notice period. *Id.* According to Oregon’s unemployment compensation law, such a situation must be analyzed as if the discharge did not occur. OR. REV. STAT. § 657.176(8)(c) (2020). Therefore, the determination was viewed as a resignation and hinged on “whether or not claimant’s planned leaving was for good cause.” EAB Decision 2015-EAB-0876 at 3.

193. EAB Decision 2015-EAB-0876 at 4.

194. *Id.*

195. *Id.*

reasons” good cause exception.¹⁹⁶ Nonetheless, Oregon’s objective good cause standard allowed Jane to receive benefits based on what a reasonable person would do under the circumstances.

b. Washington’s Travis Taron

The Washington Commissioner’s Review Office reviewed a factually similar situation when considering *Travis Taron*.¹⁹⁷ Travis Taron worked as a yard foreman in Kenmore, Washington, and lived in Lynnwood, Washington.¹⁹⁸ In August 2015, Travis quit his job to relocate over 150 miles to Yakima, Washington, “where his fiancée had obtained a job.”¹⁹⁹ Travis and his fiancée had been engaged since August 2014 and shared two young children.²⁰⁰ Because of their move to Yakima, Travis and his fiancée delayed their wedding and the couple was neither married nor registered as domestic partners at the time of Travis’s resignation.²⁰¹

Travis’s job separation closely resembled a codified good cause reason that permits a claimant to receive unemployment benefits if they “[l]eft work to relocate for the employment of a spouse or domestic partner that is outside the existing labor market area.”²⁰² Along those lines, the Commissioner established that Travis had “left employment due to his fiancée’s new employment in Yakima, which was well outside of claimant’s labor market area.”²⁰³ However, because Travis was “neither married, nor was he in a domestic partnership, at the time he quit his employment,” the Commissioner found that Travis lacked good cause to quit his job and was therefore ineligible for unemployment benefits.²⁰⁴

Thus, Travis’s unemployment eligibility determination depended on the precise legal status of his relationship.²⁰⁵ Because Travis did not technically relocate for his “spouse” or “domestic partner,” he could not

196. OR. ADMIN. R. 471-030-0038(5)(g) (2020); *see also id.* at R. 471-030-0038(1)(e) (defining “compelling family reasons”).

197. No. 1001, 2016 WL 9384209 (Emp. Sec. Dep’t Feb. 12, 2016).

198. *Id.* at *1.

199. *Id.*

200. *Id.*

201. *Id.*

202. *Id.* at *2 (emphasis omitted) (quoting WASH. REV. CODE § 50.20.050(2)(b)(iii) (2020)).

203. *Id.*

204. *Id.* at *3.

205. *Id.* at *2. In issuing this decision, the Commissioner noted that Black’s Law Dictionary defined the term “spouse” to mean “[o]ne’s husband or wife by lawful marriage,” while Washington law defined “domestic partner” as “two adults who meet the requirements of [Revised Code of Washington (RCW)] 26.60.030 and have been issued a certificate of state registered domestic partnership by the Washington secretary of state.” *Id.* (citing WASH. ADMIN. CODE § 192-100-075 (2020)).

have good cause to leave his job.²⁰⁶ To relocate one's life and employment for a mere fiancée proved insufficient.

2. *Derived Reasoning*

Different eligibility determinations resulted from similar circumstances in Washington and Oregon. The facts of Oregon's Jane Doe decision and Washington's *Travis Taron* are not identical; two situations likely never are. However, the core facts in each case were ultimately the same: engaged individuals faced a choice between quitting their job to relocate with their future spouse or remaining employed and suffering long commutes and familial strain. In both cases, the individuals chose to quit their job and maintain their relationships.

Both Jane and Travis acted reasonably despite their different eligibility determinations. In Jane's situation, she reasonably ended the stress and exhaustion of maintaining a job three hours away from her fiancé; for this, Jane's reasonableness constituted good cause and entitled her to unemployment benefits.²⁰⁷ In Travis's situation, he made a similarly reasonable choice and decided to move with his fiancée and children.²⁰⁸ But, under Washington law, his reasonable choice did not constitute good cause justifying benefit eligibility.²⁰⁹ Although these cases involved two similarly situated claimants who made similarly reasonable choices, only the claimant subject to Oregon's voluntary separation standard was eligible for unemployment benefits.

B. *North Dakota's "Good Cause" Standard*

Under North Dakota law, an individual is not eligible for unemployment benefits if they "left [their] most recent employment voluntarily without good cause attributable to the employer."²¹⁰ Certain outlined circumstances constitute good cause and therefore do not disqualify an individual from receiving benefits.²¹¹ These circumstances include leaving work: (1) due to an "illness or injury";²¹² (2) due to an

206. *Id.* at *3 ("In this case, claimant was neither married, nor was he in a domestic partnership, at the time he quit his employment. As such, 'good cause' for leaving work cannot be established pursuant to RCW 50.20.050(2)(b)(iii).").

207. See EAB Decision 2015-EAB-0876 (Or. Aug. 24, 2015).

208. See *Taron*, 2016 WL 9384209, at *1.

209. *Id.* at *3.

210. N.D. CENT. CODE § 52-06-02(1)(a) (2019).

211. See *id.* § 52-06-02(1).

212. *Id.* § 52-06-02(1)(d).

“injury or illness caused or aggravated by the employment”;²¹³ (3) that is over 200 miles away from the individual’s home in order to accept work which is less than 200 miles away;²¹⁴ (4) to “accept a bona fide job offer with a[n] . . . employer who laid off the individual and with whom the individual has a demonstrated job attachment”;²¹⁵ or (5) if the reason is “directly attributable to domestic violence, stalking, or sexual assault.”²¹⁶ Conversely, leaving work “in anticipation of discharge or lay off” does not constitute good cause.²¹⁷

Even with the various good cause situations outlined above, North Dakota’s unemployment statutes are rather sparse. As a result, case law has played a large role in filling the gaps as to what constitutes good cause. Accordingly, North Dakota courts read “good cause” to mean “a reason for abandoning one’s employment which would impel a reasonably prudent person to do so under the same or similar circumstances.”²¹⁸ Additionally, good cause must be “attributable to the employer,”²¹⁹ which North Dakota courts have refined to mean a cause “produced, caused, created or as a result of actions by the employer.”²²⁰

North Dakota’s unemployment administrative agency—Job Service North Dakota (Job Service)—and courts also markedly account for the state’s unemployment law’s declaration of public policy²²¹ when determining an individual’s eligibility.²²² This policy provides that individuals should be compensated “during periods when they become unemployed through no fault of their own.”²²³ Moreover, the North Dakota Supreme Court has declared that “as long as a worker exhibits genuine commitment to working and is unemployed through no fault of his or her own, that worker is entitled to unemployment compensation.”²²⁴

213. *Id.* § 52-06-02 (1)(e).

214. *Id.* § 52-06-02 (1)(h).

215. *Id.* § 52-06-02 (1)(i).

216. *Id.* § 52-06-02 (1)(j).

217. *Id.* § 52-06-02(1)(f).

218. *Newland v. Job Serv.* N.D., 460 N.W.2d 118, 123 (N.D. 1990).

219. N.D. CENT. CODE § 52-06-02(1)(a) (2019).

220. *Newland*, 460 N.W.2d at 122 (citing *Couch v. N.C. Emp. Sec. Comm’n*, 366 S.E.2d 574, 577 (N.C. Ct. App. 1988)); *see, e.g., id.* (illustrating that “a change in one’s work hours is attributable to the employer”).

221. *See* N.D. CENT. CODE § 52-01-05.

222. *See Newland*, 460 N.W.2d at 121 (construing North Dakota’s unemployment benefit disqualification law with the statute’s public policy to give full effect to the legislature’s intent and, because it is remedial legislation, strike the balance in favor of the employee).

223. N.D. CENT. CODE § 52-01-05.

224. *Newland*, 460 N.W.2d at 121.

North Dakota's "well-established public policy"²²⁵ strikes a balance "between the rights of the unemployed worker who genuinely wants to work . . . and the protection of the former employer from quits that have nothing to do with the employer or the employment."²²⁶ A genuine attachment to the labor market "may be evidenced by the effort an employee exerts to preserve her employment and is evidence that an employee's unemployment is not caused by her own fault."²²⁷ Along those lines, North Dakota courts interpret "fault" to mean a "failure to make reasonable efforts to preserve one's employment."²²⁸

The North Dakota Supreme Court emphasizes that unemployment statutes, as remedial legislation, must be "liberally construed in favor of the purposes obviously intended."²²⁹ Therefore, the balance of North Dakota's unemployment laws must be struck in favor of the employee to "soften the harsh impact of involuntary unemployment."²³⁰

1. Case Comparison: North Dakota vs. Washington

In the unemployment benefits context, North Dakota stands out given its high reciprocity rate: about seven out of ten jobless workers receive unemployment benefits.²³¹ This statistic nationally and in Washington drops to an average of about three for every ten jobless workers who receive unemployment benefits.²³² A review of North Dakota unemployment decisions also reveals that, in comparison to Washington, North Dakota stands out given its focus on effectuating and promoting its law's public policy.²³³ The following cases are factually similar only in that both claimants listed multiple reasons for quitting their jobs.²³⁴ The relevant analysis, however, arises from the fact that the courts in each case place different levels of emphasis on effectuating their respective state's public policy.

225. Vogel Law Firm, *Checks and Balances: Your Role in Unemployment Compensation Claims*, 17 N.D. EMP. L. LETTER 1 (2012).

226. *Newland*, 460 N.W.2d at 121.

227. *Id.* at 124.

228. *Id.* at 122.

229. *Willits v. Job Serv.* N.D., 2011 ND 135, 799 N.W.2d 374, 377.

230. *Newland*, 460 N.W.2d at 121.

231. WHERE STATES ARE, *supra* note 6, at 12.

232. *Id.*

233. *See id.* at 121–22, 124; *Willits*, 799 N.W.2d 374, 377–78; *Baier v. Job Serv.* N.D., 2004 ND 27, 673 N.W.2d 923, 926; *Johnson v. Job Serv.* N.D., 1999 ND 42, 590 N.W.2d 877, 880.

234. Out of the vast amount of unemployment benefit appeals that take place, few decisions are published or made available to the public. Therefore, I was unable to find North Dakota decisions that factually resembled Washington decisions.

a. *Newland v. Job Service North Dakota*

In the seminal North Dakota unemployment case of *Newland v. Job Service North Dakota*,²³⁵ Job Service denied North Dakota resident Joy Newland’s claim for unemployment benefits on the basis that she had left her “employment without good cause attributable to her employer.”²³⁶ Newland worked for “approximately one-and-a-half years as a utility clerk and order filler for Dakota Drug, Inc.,” where her normal hours were from 7:30 a.m. until 4:30 p.m.²³⁷ One day, however, Newland was informed that her schedule would change to a new shift running from “at least 4:30 p.m. until 8:30 p.m. or later, as required to complete [her] work.”²³⁸ Although the shift change “did not involve either an increase or reduction in hours,” the time Newland was to begin and end work each day became uncertain and variable.²³⁹ As a wife and mother of three children, an unpredictable schedule including night work was not feasible for Newland.²⁴⁰

When Job Service initially denied Newland’s unemployment benefits claim, Newland introduced evidence to support three reasons for her resignation, which were: (1) a substantial change in work hours; (2) an inability to locate child care past 7 p.m. in her community; and (3) the excessive cost of child care.²⁴¹ Even with these factors in mind, Job Service determined that Newland quit because the cost of child care made it “economically [im]practical for her to continue” working.²⁴² Additionally, Job Service found that Newland’s reason for quitting—parental obligations—was personal and not attributable to the employer as required to constitute good cause under the state’s statute.²⁴³

On review, the North Dakota Supreme Court reversed and remanded the case.²⁴⁴ Notably, the Court focused its holding on the state’s public policy of “soften[ing] the harsh impact of involuntary unemployment.”²⁴⁵ The Court reasoned that “[o]bviously, both Job Service and this Court

235. 460 N.W.2d 118, 123 (N.D. 1990).

236. *Id.* at 120.

237. *Id.*

238. *Id.*

239. *Id.*

240. *Id.* To make matters more difficult, Newland’s husband already worked night shifts. *Id.* Therefore, Newland’s new schedule would require the family to locate child care to cover when both Newland and her husband worked in the evening. *Id.* at 122.

241. *Id.*

242. *Id.* at 120.

243. *Id.*

244. *Id.*

245. *Id.* at 121.

must construe the governing statutes to promote the public policy of this State.”²⁴⁶ With this in mind, however, the Court recognized that “[n]othing in our unemployment compensation law suggests that a claimant must rest her entire claim to compensation on one reason for quitting a job.”²⁴⁷ Although one of Newland’s reasons—lack of child care—may not have constituted good cause to quit, the Court instructed Job Service to “consider all reasons which may have combined to give the claimant good cause to quit.”²⁴⁸ By weighing all asserted reasons relating to a job separation, the agency could properly determine whether “the employee . . . made a good faith effort to remain ‘attached to the labor market’ but did not succeed through ‘no fault’ of her own,” thus furthering the state’s public policy.²⁴⁹ The *Newland* Court’s stance on emphasizing the unemployment law’s public policy is representative of the state’s overall eligibility determinations.²⁵⁰

b. *Washington’s Wendy K. Rivera*

In contrast, *Wendy K. Rivera*²⁵¹ demonstrates how the Employment Security Act’s purpose is not at the forefront of eligibility determinations in Washington. Wendy Rivera resided in Washington and worked as a Monitor Tech CNA from 2006 until 2010.²⁵² After separating from her job, Rivera and her husband permanently relocated to Phoenix, Arizona, to live near their twenty-six-year-old daughter.²⁵³

When filing for Washington unemployment benefits, Rivera indicated that the primary reason she quit was because her daughter was having legal problems.²⁵⁴ Rivera explained that her daughter had violated her parole and spent a week in jail.²⁵⁵ Following this incident, it became evident to Rivera that her daughter needed her parent’s guidance, thus

246. *Id.* at 122.

247. *Id.* “[U]nder the [North Dakota] statute, as long as a worker exhibits a genuine commitment to working and is unemployed through no fault of his or her own, that worker is entitled to receive unemployment compensation.” *Id.* at 121.

248. *Id.* at 122.

249. *Id.* (quoting N.D. CENT. CODE § 52-01-05 (2019)).

250. *See* *Willits v. Job Serv.* N.D., 2011 ND 135, 799 N.W.2d 374, 377–78; *Baier v. Job Serv.* N.D., 2004 ND 27, 673 N.W.2d 923, 926; *Johnson v. Job Serv.* N.D., 1999 ND 42, 590 N.W.2d 877, 880.

251. No. 959, 2010 WL 6795725 (Emp. Sec. Comm’r 2010).

252. *Id.* at *1.

253. *Id.*

254. *Id.*

255. *Id.*

prompting Rivera and her husband to move to be near their daughter.²⁵⁶ Rivera wrote in her benefits application that her resignation was “necessary” because her daughter would have been without her mother when she needed her most and that this essential parental support would be long term.²⁵⁷ In response to ESD’s request for more information, Rivera wrote that she was “[m]oving to Arizona to be near [her] kids” and that she “[didn’t] think [the ESD employee] needed to know the details” given their personal nature.²⁵⁸

After ESD initially denied her benefits, Rivera informed the ALJ at her hearing that in addition to quitting for her daughter’s legal problems, “her daughter was being abused by a man she was dating and needed protection.”²⁵⁹ Rivera testified that when she had arrived in Phoenix, she found her daughter “emaciated” and “bruised.”²⁶⁰ Moreover, Rivera explained that “the protection she provides to her daughter consists of making regular visits to her daughter’s residence to see if the boyfriend is around and to check her daughter for signs of abuse, such as bruising.”²⁶¹

The ALJ found Rivera ineligible for benefits, and the Commissioner’s Review Office later affirmed this decision.²⁶² While acknowledging that part of Rivera’s reason for quitting was to protect her daughter from domestic violence, the Commissioner’s decision noted that the “totality of the evidence” illustrated that Rivera’s “primary reason” for quitting her job was to “relocate nearby her daughter . . . to provide long-term, personal parental support and guidance to her daughter concerning her daughter’s lifestyle and legal problems.”²⁶³

Quitting one’s job in order to protect an immediate family member from domestic violence *is* one of the eleven good cause reasons under Washington’s unemployment laws.²⁶⁴ The Commissioner even analyzed whether the situation met the statutory requirements for leaving one’s job

256. *Id.*

257. *Id.* at *1–2.

258. *Id.* at *2.

259. *Id.*

260. *Id.* at *3.

261. *Id.*

262. *Id.* at *1.

263. *Id.* at *3.

264. WASH. REV. CODE § 50.20.050(2)(b)(iv) (2020); *see also id.* § 26.50.010(3) (defining “[d]omestic violence”); WASH. ADMIN. CODE § 192-150-112(1) (2020) (defining “[i]mmediate family [member]”); *id.* § 192-150-113 (expanding on “[d]omestic violence” as a good cause reason to resign by explaining that “you are not required to exhaust reasonable alternatives prior to leaving work,” the “amount of notice you provide to your employer” will not be a factor of the situation’s good cause determination, and listing other factors to be considered).

to protect a family member from domestic violence.²⁶⁵ Among other things, the Commissioner determined that Rivera's daughter was a member of her "immediate family" and that Rivera's daughter had a "dating relationship with the alleged abuser."²⁶⁶ Ultimately, however, none of this analysis made a difference to Rivera's eligibility. Because the evidence did not establish that Rivera's "*primary* reason" for leaving work was due to the domestic violence her daughter was experiencing, Rivera did not have good cause to leave her employment.²⁶⁷

Notably, the Commissioner based this decision on two factors.²⁶⁸ The first factor was the timeframe of Rivera's decision to quit and relocate.²⁶⁹ The second, more relevant factor was that Rivera's situation did not satisfy the statutory requirement that the resignation be "necessary" because, as the Commissioner explained, "there [was] no evidence that law enforcement or victim abuse advocates could not have provided protection"; rather, "the type of protection" Rivera would be able to provide her daughter was "*de minimis*."²⁷⁰ In the *Rivera* decision, there is no mention of the Washington Employment Security Act's declaration of public policy.

2. *Derived Reasoning*

Newland and *Rivera* illustrate how placing varying levels of emphasis on a statute's purpose can render different outcomes. When faced with multiple reasons for an employee's voluntary separation, North Dakota's public policy tips the balance in favor of the employee to consider all the quit related reasons the employee asserts.²⁷¹ Unemployment

265. *Rivera*, 2010 WL 6795725, at *3–4.

266. *Id.* Moreover, "it [was] of no legal consequence whether claimant's daughter lived with claimant at the time claimant quit or after claimant moved to Phoenix," the Commissioner continued, "[or] that the alleged perpetrator of domestic violence was claimant's daughter's boyfriend . . . [or] that claimant did not notify her employer that she was relocating to protect her daughter from domestic violence." *Id.*

267. *Id.* at *4 (emphasis added).

268. *Id.*

269. *Id.* The Commissioner questioned the timeline of Rivera's job separation because of "the lengthy delay between the alleged criminal assault for which the boyfriend was charged and [Rivera]'s decision to quit and relocate." *Id.* To support the necessity of her job separation, Rivera had submitted a letter dated January 7, 2010, from the City of Phoenix, Office of the City Prosecutor, Victim Services identifying Rivera's daughter "as a victim in connection with charges of assault and criminal damage filed by the prosecutor against a male defendant." *Id.* at *2. Rivera resigned from her position nearly five months later in May and did not move to Phoenix until June. *Id.* at *4. Therefore, the Commissioner did not find Rivera's assertion that her primary reason for quitting was to protect her daughter to be credible. *Id.*

270. *Id.* at *5.

271. *Newland v. Job Serv.* N.D., 460 N.W.2d 118, 121 (N.D. 1990).

compensation exists to minimize the suffering caused by involuntary unemployment;²⁷² North Dakota can accomplish this goal only by fully accounting for an individual's situation, their job attachment and effort to remain a part of the workforce, and any possible alternatives to unemployment. An employee can quit their job for a variety of reasons. Precluding an individual's eligibility merely because one of their asserted reasons does not constitute good cause would hinder North Dakota's public policy.

Conversely, ESD and Washington courts rarely account for the public policy of the state's unemployment laws when analyzing an employee's voluntary resignation. This is likely the result of the legislature's choice to structure the law as a one-size-fits-all list that precludes any extraneous considerations. Even facing Rivera's compelling situation, ESD found Rivera ineligible for benefits because relocating to protect her daughter from domestic violence was not her "primary reason" for quitting.²⁷³ Understandably, a parent could be hesitant to divulge personal familial information to a state agency, which is illustrated by Rivera's statement that she did not feel the need to disclose further details concerning her job separation.²⁷⁴ Moreover, it is arguable whether a parent's job separation to protect their daughter from domestic violence could even be considered a *voluntary* choice, or whether a parent has *no choice* but to protect their family.²⁷⁵ Either way, sufficiently accounting for a state's public policy, and especially remedial legislation's purpose, can produce varying results.

C. *Pennsylvania's Voluntary Quit Provision*

Under Pennsylvania law, an employee is ineligible for unemployment benefits if their job loss "is due to voluntarily leaving work without cause of a necessitous and compelling nature."²⁷⁶ Although the state has not defined "cause of a necessitous and compelling nature,"²⁷⁷ the statutory structure outlines various situations that do not qualify as such a cause. For one, a voluntary resignation due to a disability when "the employer is able to provide other suitable work" does not constitute the requisite

272. See WASH. REV. CODE § 50.01.010 (2020); N.D. CENT. CODE § 52-01-05 (2019).

273. *Rivera*, 2010 WL 6795727, at *3.

274. *Id.* at *2.

275. See, e.g., Camille Carey & Robert A. Solomon, *Impossible Choices: Balancing Safety and Security in Domestic Violence Representation*, 21 CLINICAL L. REV. 201 (2014) (discussing the "impossible choice" victims of domestic violence face when deciding between safety or financial security, considering enforcement of sanctions against the abuser may ultimately deprive the victim of financial support in the form of child support or alimony).

276. 43 PA. CONS. STAT. § 802(b) (2020).

277. *Id.*

cause.²⁷⁸ Additionally, an individual will be ineligible for benefits if they left work because of a “stoppage of work” resulting from a labor dispute the employee was involved in,²⁷⁹ when engaged in self-employment,²⁸⁰ or when leaving work “to preserve the employe[e]’s existing entitlement to a pension.”²⁸¹

Conversely, Pennsylvania will not disqualify an employee when they would have been required to “join or remain a member of a company union . . . resign from or refrain from joining any bona fide labor organization,” or accept undesirable wages, hours, or conditions of employment.²⁸²

Like in North Dakota, Pennsylvania courts have stepped in to expand on when an individual’s voluntary separation results from “cause of a necessitous and compelling nature.”²⁸³ Specifically, such cause “results from circumstances which produce pressure to terminate employment that is both real and substantial, and . . . would compel a reasonable person under the circumstances to act in the same manner.”²⁸⁴ Thus, Pennsylvania utilizes a reasonable person standard.²⁸⁵

1. *Case Comparison: Pennsylvania vs. Washington*

Pennsylvania’s voluntary resignation law is similar to those of both Oregon and North Dakota because all three are standard-based systems that judge an individual’s benefit eligibility by objective standards.²⁸⁶ Pennsylvania’s system stands out, however, given the “broad flexibility of its voluntary quits provision”²⁸⁷ as well as protection of “care-giving workers from biased assumptions by agency adjudicators.”²⁸⁸

278. *Id.*

279. *Id.* § 802(d).

280. *Id.* § 802(h).

281. *Id.* § 802(k).

282. *Id.*

283. See *Taylor v. Unemployment Comp. Bd. of Rev.*, 378 A.2d 829 (Pa. 1977); *Truitt v. Unemployment Comp. Bd. of Rev.*, 589 A.2d 208 (Pa. 1991); *Allegheny Valley Sch. v. Unemployment Comp. Bd. of Rev.*, 697 A.2d 243 (Pa. 1997).

284. *Taylor*, 378 A.2d at 832–33.

285. *Id.*; *Truitt*, 589 A.2d at 210.

286. For Oregon’s reasonable person standard, see *supra* text accompanying notes 171–172. For North Dakota’s reasonable person standard, see *supra* text accompanying note 218. For Pennsylvania’s reasonable person standard, see *supra* text accompanying notes 284–285.

287. McConnell, *supra* note 159, at 126.

288. *Id.* at 129. Unlike most other states, Pennsylvania does not condition benefit eligibility on a worker’s “24-7 availability.” *Id.* at 128. Rather, “[i]ts statute omits the requirement that claimants be immediately willing and able to accept all suitable work. This provision has been interpreted as

Historically, unemployment benefit systems have failed to adequately address the expanding role of women in the workplace and their corresponding reduced role as care-givers.²⁸⁹ Women are often disadvantaged as unemployment benefit claimants because “many of the time-honored rules and practices of unemployment insurance law arise from the male breadwinner model.”²⁹⁰ In this context, women may face constrained duties as both employees and mothers.²⁹¹ Whether or not a state’s unemployment system accounts for this problem depends on its good cause definition. Two compelling cases from Washington and Pennsylvania demonstrate how each state’s respective good cause law has varying impacts on women’s eligibility when they quit their jobs due to care-giving obligations.

a. *Pennsylvania’s Truitt v. Unemployment Compensation Board of Review*

In *Truitt v. Unemployment Compensation Board of Review*,²⁹² the Pennsylvania Supreme Court reviewed the lower unemployment agency’s denial of Kathleen Truitt’s unemployment benefits. Truitt, a single mother of two young children, worked full-time for a trucking company for over six years.²⁹³ After the trucking company cut her hours to part-time, Truitt began receiving partial unemployment benefits until—as required to remain eligible for benefits—she applied for other jobs and secured a waitress position at T.G.I. Fridays.²⁹⁴ During Truitt’s waitressing shifts, Truitt’s mother would care for and watch her children.²⁹⁵

About a month into her new job, Truitt’s mother broke a bone in her elbow, rendering her unable to drive a vehicle to her daughter’s home, cook, provide transportation for the children, or otherwise adequately care for the children.²⁹⁶ Two days after her mother’s injury, Truitt was

providing a presumption that a worker who registers for unemployment is available for work, which protects care-giving workers from biased assumptions by agency adjudicators.” *Id.* at 128–29 (footnote omitted).

289. Richard McHugh & Ingrid Kock, *Unemployment Insurance: Responding to the Expanding Role of Women in the Work Force*, 27 CLEARINGHOUSE REV. 1422, 1423, n.8 (1994) (“In 1970, 28.7 percent of mothers with children under the age of six were in the workforce. By 1990, 58.2 percent of mothers of young children were in the workforce.”).

290. *Id.* at 1424.

291. *See id.* at 1422–24.

292. 589 A.2d 208 (Pa. 1991).

293. *Id.* at 209.

294. *Id.*

295. *Id.*

296. *Id.*

scheduled to work a late night shift.²⁹⁷ Both Truitt and her mother reached out to family members, former babysitters, and day care centers in an effort to find replacement care for the children, but no care was available after 6 p.m.²⁹⁸ Because she had only worked four weeks at T.G.I. Fridays, Truitt had not yet accrued any sick leave or vacation time.²⁹⁹ Truitt “requested that her employer place her in a position that required only day shift work, but this request was denied.”³⁰⁰ With no other option but to “risk the safety and well-being of her children by leaving them home alone until 3:00 in the morning,” Truitt voluntarily ended her employment.³⁰¹

Using Pennsylvania’s reasonable person standard, the Pennsylvania Supreme Court reversed the agency’s decision—which the lower court had affirmed—and stated that based on “the hours that [Truitt] was required to work, we believe that any reasonable person who had to find child care on this short notice would have done what [Truitt] did.”³⁰² The Court reasoned that “the sudden physical disability of a trusted baby-sitter and the unavailing search for a replacement within two days produced both ‘real and substantial pressure’ on [Truitt] to terminate her employment.”³⁰³ Based on Truitt’s good faith efforts to maintain her employment and find other sources of reliable child care, the Court did not find Truitt at fault for her job loss; rather, she did what any reasonable person would do under the circumstances.³⁰⁴

Moreover, the Court touched on the adverse public policy incentives that arise under a contrary decision.³⁰⁵ The Court noted that employees “need not place their children with strangers or unchecked day care agencies in order to show that they have met the aforesaid standards that we impose upon them.”³⁰⁶

297. *Id.*

298. *Id.*

299. *Id.*

300. *Id.*

301. *Id.*

302. *Id.* at 210. When reflecting on Truitt’s actions in working with her employer to switch shifts and attempting to find alternative child care, the Court noted that “[t]here is nothing more that we can or should ask of an employee before that employee terminates his or her employment.” *Id.*

303. *Id.*

304. *Id.* In addition to noting that Truitt’s “efforts to provide for her family were commendable,” the Court applauded her good faith adherence to her benefit eligibility requirements that mandated she accept the position at T.G.I. Fridays in the first place. *Id.* The Court acknowledged that “[Truitt] could have stayed home and collected unemployment compensation benefits after the trucking company, where she had been earning \$11.89 an hour, laid her off. But no! She instead obtained employment as a waitress where her base pay was \$2.01 an hour.” *Id.*

305. *Id.*

306. *Id.* (footnote omitted).

b. *Washington’s Sennott v. Department of Employment Security*

Division I of the Washington Court of Appeals analyzed a factually similar case in *Sennott v. Department of Employment Security*.³⁰⁷ For four years, Kelly Sennott—a single mother of two young children—worked as an office manager at a medical clinic.³⁰⁸ Before going to work each morning, Sennott would wake her children up at 7:15 a.m. and drop them off at her parents’ house.³⁰⁹ After separating from her office manager position for reasons not stated in the record, Sennott began receiving unemployment benefits.³¹⁰ She followed the requisite requirements in order to maintain her eligibility, including seeking out and accepting suitable employment.³¹¹

Consequently, Sennott applied for and accepted a job as a server and cashier for Triple 7 Restaurant and Bar.³¹² Although she originally believed the restaurant had hired her for a position that involved “occasional very early morning shifts,” Sennott testified during her unemployment hearing that she realized “right after . . . [taking] the job, that [she] probably should never have taken it” given the 5:30 a.m. starting shifts.³¹³ Rather, she ended up accepting the job because she “thought it was the right thing to do” because of the unemployment benefit requirement that claimants apply for and accept work.³¹⁴

Upon starting the job, Sennott was scheduled to work twenty-five hours each week, and all of her shifts except one within her first month were scheduled to begin at 5:30 a.m.³¹⁵ Working this schedule required Sennott to wake her children up at 3:30 a.m. to take them to her parents’ house, which Sennott described to her employer and during testimony as “not really feasible for [her children].”³¹⁶ Therefore, Sennott quit after four days of work.³¹⁷

On appeal, Sennott argued that she had not quit her job; instead, she had “refused new work that was not suitable.”³¹⁸ Because Sennott initially

307. No. 78673-3-I, 2019 WL 3110780 (Wash. Ct. App. 2019).

308. *Id.* at *1.

309. *Id.*

310. *Id.*

311. *Id.*

312. *Id.*

313. *Id.* at *3.

314. *Id.*

315. *Id.* at *1.

316. *Id.*

317. *Id.*

318. *Id.* at *3.

believed the job involved occasional early morning shifts, she contended that learning *all* her shifts would begin at 5:30 a.m. constituted a “substantial change in working conditions” that gave her the right to refuse the offer and continue receiving benefits.³¹⁹

Despite Sennott’s efforts, the Court of Appeals affirmed the Commissioner’s findings.³²⁰ First, the court found that Sennott’s realization that she “probably should never have taken [the job]” due to the early shifts constituted her knowledge of the early morning hours and refuted her argument that the schedule constituted a “substantial change in working conditions” or an offer of “new work.”³²¹ Second, the court affirmed the Commissioner’s finding that Sennott had voluntarily quit without good cause.³²² Although Sennott “may have had a very good reason to quit her employment due to a lack of child care,” the Commissioner stated that “a good reason does not necessarily equate to a ‘good cause’ basis for her voluntary quit for the purpose of unemployment insurance.”³²³ Because Washington’s voluntary resignation law is limited to the exclusive statutory situations, “[I]ack of childcare [was] not a good cause reason.”³²⁴

2. *Derived Reasoning*

The essence of both situations that Truitt and Sennott faced as mothers was similar. Each individual was receiving unemployment benefits and applied for and accepted work as required to maintain their benefit eligibility. Further, each owed obligations to their employer as an employee and to their children as a care-giver. When faced with constrained duties under each role, Truitt and Sennott acted reasonably and chose to care for their children rather than leave them unattended or wake them up at very early hours.

Neither Pennsylvania nor Washington has a specific provision in their respective voluntary separation laws that outlines when a mother or care-giver has good cause to quit as a result of their care-giving duties. Consequently, neither Truitt’s nor Sennott’s situation fit squarely within a good cause exception. This is where a flexible, standard-based system—like Pennsylvania’s—benefits individuals. Pennsylvania is able to take any circumstance and consider whether the employee’s reason for quitting

319. *Id.*

320. *Id.* at *4.

321. *Id.* at *3–4.

322. *Id.*

323. *Id.* at *1.

324. *Id.*

was “of a necessitous and compelling nature” and thus constituted good cause.³²⁵ In comparison, Washington’s restrictive, rule-based system cannot even consider such a situation if it does not fall within one of the eleven enumerated reasons.³²⁶

Even with this limitation in place, Washington courts have recognized “serious policy concerns” and noted that “unemployment laws can disfavor parents who have to juggle their responsibilities to their children with their need for employment outside the home.”³²⁷ With the current good cause definition, however, neither ESD nor the courts can address these policy concerns; Washington claimants are not given any chance of eligibility for resigning due to care-giving responsibilities not fitting into the one-size-fits-all list.

Parents in both Pennsylvania and Washington likely face similar tensions between their parental and employment obligations. Only in Pennsylvania, however, can a care-giver’s parental obligations possibly constitute good cause to quit their job.³²⁸ Parents in Pennsylvania do not face unique hardships in finding child care that Washington parents are immune to. The fact that parents in Pennsylvania—but not in Washington—are eligible to receive benefits under these circumstances reflects an unfair legislative choice that disadvantages Washington parents.

Moreover, receiving unemployment benefits due to conflicts with parental obligations is not automatic. *Truitt* illustrates that parents must still show good faith efforts to attain child care and are disqualified if their inability to find adequate care does not result in necessitous and compelling reasons to end their employment.³²⁹ Like the *Truitt* Court noted, *Truitt*’s “efforts to provide for her family were commendable”: she attempted to arrange a different schedule with her employer, which her employer declined, and she and her mother reached out to multiple potential child care sources.³³⁰ Rather than merely allege an inability to find child care and receive benefits, the claimant bears the burden of establishing the existence of necessitous and compelling reasons forcing them to quit.³³¹

325. See 43 PA. CONS. STAT. § 802(b) (2020).

326. See WASH. REV. CODE § 50.20.050(2)(b) (2020); *Sennott*, 2019 WL 3110780, at *1 (explaining that for the purpose of Washington’s voluntary separation law, “a good reason [to quit] does not necessarily equate to a ‘good cause’ basis” that entitles an individual to benefits).

327. *Ali v. Emp. Sec. Dep’t*, No. 76655-4-I, 2018 WL 3738798, *4 (Wash. Ct. App. 2018).

328. See *Truitt v. Unemployment Comp. Bd. of Rev.*, 589 A.2d 208, 210 (Pa. 1991).

329. *Id.*

330. *Id.*

331. *Id.*

Adverse consequences can and do result if the law forces parents to choose between their work schedules or leaving children unattended.³³² Children may incur injuries that require medical attention, discover at-home hazards like cleaning chemicals, or risk allowing intruders or other unknown visitors into the home.³³³ Additionally, like in *Sennott*, work schedules requiring parents to wake their children up at early hours to take them to child care could result in harmful circumstances. Children need a proper night's sleep to support their physical and mental development.³³⁴ Not getting the proper amount of sleep can lead to weight gain, trouble in school, bad judgment, or long-term psychological effects such as depression or anxiety.³³⁵ By deemphasizing children's well-being and health in favor of maintaining employment, Washington's good cause standard forces parents to face conflicting duties and negative consequences.

Additionally, an employee's joblessness due to their parental obligations or lack of child care is often involuntary. If a caretaker becomes unavailable, the lack of child care alternatives bears no causal relationship to the parent's actions.³³⁶ Although Washington has recognized this concern in cases such as *Sennott*, its laws do not appropriately account for such situations.

IV. PROPOSED "GOOD CAUSE" DEFINITION

No two states regulate their unemployment compensation systems under the same set of rules and guidelines.³³⁷ For example, comparing the unemployment laws of Oregon, North Dakota, Pennsylvania, and Washington highlights each system's unique qualities. In particular, the laws of Oregon, North Dakota, and Pennsylvania offer models of voluntary resignation eligibility standards that more adequately confront

332. CHILD WELFARE INFO. GATEWAY, FACTSHEET FOR FAMILIES: LEAVING YOUR CHILD HOME ALONE 3 (2018), <https://www.childwelfare.gov/pubPDFs/homealone.pdf> [<https://perma.cc/UGH9-XVJ5>].

333. *Id.*

334. Christopher Curley, *Only Half of U.S. Children Get Enough Sleep: Why That's a Serious Problem*, HEALTHLINE WEBMD (Oct. 25, 2019), <https://www.healthline.com/health-news/children-lack-of-sleep-health-problems#How-to-help-kids-sleep-better> [<https://perma.cc/7ZJM-4S9Y>];

R. Morgan Griffin, *This Is Your Kid's Brain Without Sleep*, WEBMD, <https://www.webmd.com/parenting/raising-fit-kids/recharge/features/brain-without-sleep#1> [<https://perma.cc/V4RS-48KQ>].

335. Griffin, *supra* note 334.

336. While a lack of child care does not bear a causal relationship to the employer's actions, unemployment compensation laws must be liberally construed to effectuate their purpose, which would thus lean in favor of the employee. *See* WASH. REV. CODE § 50.01.010 (2020).

337. *See generally* WHERE STATES ARE, *supra* note 6, at 7–8.

the realities of no-fault job separations in comparison to Washington’s law. Therefore, I suggest a legislative amendment to Washington’s good cause provision that borrows from these states’ laws. I propose that Washington repeal its exclusive good cause list and adopt a standard-based approach, like the following, in its place: An employee will be found to have voluntarily left their work with good cause if the cause was of such a necessitous and compelling nature that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have left work.

This standard encapsulates three principles, each derived from the unemployment systems of Oregon, North Dakota, and Pennsylvania. First, by repealing the exclusive good cause list, ESD and Washington courts could more freely effectuate the law’s public policy—a principle at the forefront of the North Dakota system.³³⁸ The Washington legislature chose to favor big business when it enacted its exclusive good cause list;³³⁹ however, the legislature must balance those interests with the interests of those who unemployment compensation is intended to protect: workers. Absent such a restrictive determination of what constitutes good cause, North Dakota is unobstructed in its ability to advance the purpose of remedial legislation as a whole and grant benefits to those “unemployed through no fault of their own.”³⁴⁰

Washington’s current legislation prohibits ESD and the courts from looking outside of the eleven reasons when determining whether an individual’s voluntary separation constitutes good cause. This effectively excludes from consideration the law’s “purpose of reducing involuntary unemployment and the suffering caused thereby to the minimum.”³⁴¹ Such a system that asserts its purpose but has no way of fulfilling it is inapposite and should be repealed.

Second, the suggested provision would require cause of a “necessitous and compelling nature”³⁴² to justify an employee’s voluntary resignation, a provision derived from Pennsylvania’s law. Such a standard sets a high bar for eligibility to protect against potential moral hazard. Not just any minor inconvenience could provide an individual with good cause to quit their job; rather, the driving reason would have to be so compelling and forceful that the employee was left with no reasonable alternative but to quit. Moreover, the cause would need to rise to the level of creating “real

338. See N.D. CENT. CODE § 52-01-05 (2019).

339. See *supra* notes 86–89 and accompanying text.

340. N.D. CENT. CODE § 52-01-05.

341. WASH. REV. CODE § 50.01.010.

342. 43 PA. CONS. STAT. § 802(b) (2020).

and substantial pressure”³⁴³ to leave one’s job. Therefore, protective limitations would still be in place while allowing the intent of Washington’s laws to ring true.

This standard would also efficiently serve the Employment Security Act’s purpose. Not only would there be an objective basis upon which to determine an employee’s eligibility, but ESD and Washington courts would have flexibility and discretion in limited circumstances. For example, ESD and Washington courts could account for a claimant’s good faith efforts to find child care when determining if their job loss was through no fault of their own.³⁴⁴

Third, the proposal utilizes Oregon’s refined “reasonable person” standard by including the language of “a reasonable and prudent person of normal sensitivity, exercising ordinary common sense.”³⁴⁵ Rather than a mere reasonable person standard, the statute would provide employees with a specific basis that sets forth detailed expectations that their behavior must align with. Eligibility would depend on the employee’s reasonability, prudence, and exercise of common sense when faced with a situation compelling them to quit. As a result, ESD might consider questions such as: Did the employee give their employer a reasonable amount of time to correct the unsafe or illegal working condition prior to quitting? Did the employee exercise ordinary common sense by requesting a leave of absence in order to find reliable child care and then return to work? Did the employee prudently seek out other available positions within the company to avoid working with the supervisor who was causing their heightened anxiety symptoms? Only once an employee illustrated they took all steps that a “reasonable and prudent person of normal sensitivity, exercising ordinary common sense,”³⁴⁶ would have taken under the circumstances would they have good cause to quit.

Overall, this proposal would accomplish many important goals. For one, expanding good cause eligibility would entitle a greater proportion of individuals to receive unemployment benefits, thus protecting the health and well-being of Washingtonians during the tough times that unemployment entails. Unemployment compensation legislation is remedial in nature, meaning it should weigh in favor of helping a state’s citizens. Currently, Washington’s system fails to effectuate the Act’s purpose of “reducing involuntary unemployment” and the suffering that

343. *Truitt v. Unemployment Comp. Bd. of Rev.*, 589 A.2d 208, 210 (Pa. 1991).

344. *See supra* section III.c.i.1; *Truitt*, 589 A.2d 208.

345. OR. ADMIN. R. 471-030-0038(4) (2020).

346. *Id.*

results from it.³⁴⁷ The range of circumstances that may render an individual “unemployed through no fault of their own”³⁴⁸ far exceeds any possibility of limiting such reasons to a one-size-fits-all list; therefore, such an attempt to do so must be repealed.

Additionally, the standard this Comment proposes could help buttress the economy during recessions, such as the economic fallout following the COVID-19 pandemic. As has been experienced first-hand by many Washingtonians, unemployment compensation plays a pivotal role not only in supporting families in need but also in protecting against the harms of recessions. The COVID-19 pandemic has illustrated the importance of a strong unemployment insurance system. Therefore, now is a better time than any to make a change to the current unemployment system in order to protect and benefit those who have become jobless through no fault of their own. Because the future of Washington’s economy is unknown, the state’s legislature must take immediate and important steps in fixing its unemployment compensation system.

CONCLUSION

A one-size-fits-all approach can never adequately determine when individuals who voluntarily separate from their jobs should be eligible for unemployment benefits. As it now stands, however, Washington’s Employment Security Act imposes such an approach. It outlines eleven reasons—and only eleven reasons—that provide an individual with good cause to leave their job. Such a standard is too restrictive. It frustrates the legislation’s “purpose of reducing involuntary unemployment and the suffering caused thereby to the minimum”³⁴⁹ by stripping ESD and Washington courts of the flexibility necessary to effectuate this purpose. Therefore, Washington should look to other states’ unemployment compensation systems and craft a new standard.

After comparing Washington’s voluntary separation provision with those of Oregon, North Dakota, and Pennsylvania, I suggest that Washington eliminate its exclusive list and redefine “good cause” as cause of such a necessitous and compelling nature that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have left work. Expanding benefit eligibility is an essential step in alleviating the harms of an ongoing recession spurred by COVID-19 and preparing the state for future economic fluctuations. Washington’s legislature must act now.

347. WASH. REV. CODE § 50.01.010 (2020).

348. *Id.*

349. *Id.*

