

SMALL BUSINESSES' POST-COVID PLEA: THE NEED FOR ACCOUNTABILITY IN UNEMPLOYMENT INSURANCE DISQUALIFICATION FOR MISCONDUCT

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INTRODUCTION

Whether the majority agrees or disagrees about the larger philosophical questions of man's ultimate purpose in life, humans "were created with a vocation to work."¹ This is best articulated in the words of Pope Francis:

Work is a necessity, part of the meaning of life on this earth, a path to growth, human development and personal fulfillment. Helping the poor financially must always be a provisional solution in the face of pressing needs. The broader objective should always be to allow them a dignified life through work.²

However, the fallout following the unprecedented and unforeseen Covid-19 pandemic has exposed serious flaws in the American unemployment insurance system and Americans' shifting attitude towards work. As the pressing needs from the Covid pandemic have subsided, the question remains whether the unemployment insurance system is still aiming for the broader objective of Americans' needs.³ For example, today, despite the unemployment rate declining, both the labor force participation rate and the employment-population ratio remain stagnant.⁴ This stagnancy reflects the

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1. Pope Francis, *Laudato Si'*, [Encyclical letter on *Care for Our Common Home*], ¶¶ 127-128 (2015). [hereinafter *Laudato Si'*].

2. *Id.* ¶ 128.

3. *See id.* (The broader objective being a dignified life through work).

4. BUREAU OF LAB. STAT., U.S. DEP'T. OF LAB., USDL-23-0436, THE EMPLOYMENT SITUATION 2 (2023), https://www.dol.gov/newsroom/economicdata/empisit_03102023.pdf (Unemployment decreased

continuing effect of Covid on the labor market. It is also illustrated by today's statistics, as the current level of 5.9 million unemployed Americans remains above the pre-Covid, February 2020 level of 5.8 million.⁵ Despite 10.7 million job openings in the United States in June 2022,⁶ unemployment benefits paid out in the United States increased from \$1.69 billion in June to over \$2 billion in August of 2022.⁷ Although elementary in the statistical conclusion it brings, if there are more jobs than unemployed persons in the United States, it begs the complex question of why aren't more Americans working?

Covid cast a spotlight on the United States' unemployment insurance system because the system was a key player in the government's response to the economic ramifications of the pandemic.⁸ To counter the pandemic, in March 2020, the Coronavirus Aid, Relief, and Economic Security (CARES) Act expanded the unemployment insurance system to millions of Americans, including many not ordinarily eligible for unemployment compensation.⁹ This meant that "33 states were paying more than \$15 per hour to the unemployed . . . greater than the hoped-for federal minimum wage target by the Biden Administration."¹⁰ Specifically, \$1.9 trillion was paid out to individuals on unemployment from December 2020 to September 2021, through an additional \$300 weekly benefit on top of the weekly state unemployment benefits they were already receiving.¹¹ If this were not enough, the government also gifted around \$425.8 billion through the

to 3.6 percent, or 5.9 million people, and the labor force participation rate has shown little change at 62.5 percent along with the employment population ratio at 60.2 percent.).

5. *Id.* See also BUREAU OF LAB. STAT., U.S. DEP'T. OF LAB., USDL-20-0379, THE EMPLOYMENT SITUATION (Feb. 2020), https://www.bls.gov/news.release/archives/empst_03062020.pdf.

6. BUREAU OF LAB. STAT., U.S. DEP'T OF LAB., THE ECONOMICS DAILY (2022), <https://www.bls.gov/opub/ted/2022/job-openings-decreased-to-10-7-million-in-june-2022.htm>. ("Job openings decreased to 10.7 million in June 2022.").

7. *Total monthly unemployment insurance benefits paid in the United States from January 2020 to December 2022*, STATISTA (Feb. 13, 2023), <https://www.statista.com/statistics/284857/total-unemployment-benefits-paid-in-the-us/#:~:text=In%20August%202022%2C%202.01%20billion,benefits%20in%20the%20United%20States>.

8. Manuel Alcalá Kovalski & Louis Sheiner, *How does unemployment insurance work? And how is it changing during the coronavirus pandemic?*, BROOKINGS (July 20, 2020), <https://www.brookings.edu/blog/up-front/2020/07/20/how-does-unemployment-insurance-work-and-how-is-it-changing-during-the-coronavirus-pandemic/>.

9. Ted C. Jones, *U.S. Unemployment by State -- Benefits, Status and Implications*, STEWART (July 7, 2021), <https://www.stewart.com/en/insights/2021/07/07/u-s-unemployment-by-state-benefits-status-and-implications.html>.

10. *Id.*

11. *Id.*

CARES Act one-time stimulus and the American Rescue Plan (ARP) direct payment.¹² Perhaps this affected the will to work.

As a result of the government handouts, researchers at the University of Chicago's Becker Friedman Institute discovered that "about two-thirds of workers were making more from [unemployment insurance] during the pandemic-linked expansions than when they were [actually] working. One out of five eligible unemployed workers received benefits at least twice as large as their lost earnings."¹³ In other words, it paid more not to work.

Consequently, twenty-six states withdrew from these extended benefits prior to their set termination date of September 6, 2021.¹⁴ As reflected in the current labor market statistics,¹⁵ these states rightly feared that such benefits would enable the American workforce to believe it is better off not working.¹⁶ These fears were even predicted by the legislature that created the unemployment insurance system, which is why "they tied most social safety net programs to paid employment or to families supported by a breadwinner," and kept benefits low to ensure that the availability of social insurance would not disincentivize workers from accepting low-wage jobs.¹⁷ These fears were well-founded and foreshadowed today's reality.

As the dust settles from Covid and the relief acts fade away, the growing apathy in the American workforce remains.¹⁸ With employers bearing the cost of an unemployment insurance system that is currently enabling an apathetic workforce, it is time to reevaluate how the system operates.¹⁹ Even more so, now that Covid shined a spotlight on the unemployment system, there are additional factors contributing to the urgency for change to the unemployment system, including fraud and the impending recession.²⁰

12. *Id.*

13. Kovalski & Sheiner, *supra* note 8 (citations omitted).

14. *Id.*

15. See BUREAU OF LAB. STAT., *supra* note 4; BUREAU OF LAB. STAT., *supra* note 6.

16. See generally Kovalski & Sheiner, *supra* note 8.

17. Catherine Albiston and Catherine Fisk, *Precarious Work and Precarious Welfare: How the Pandemic Reveals Fundamental Flaws of the U.S. Social Safety Net*, 42 BERKELEY J. EMP. & LAB. L. 257, 261 (2021).

18. See BUREAU OF LAB. STAT., *supra* note 4; BUREAU OF LAB. STAT., *supra* note 6; see also STATISTA, *supra* note 8.

19. See generally Kovalski & Sheiner, *supra* note 8 ("The regular UI program is funded by taxes on employers, including state taxes (which vary by state) and the Federal Unemployment Tax Act (FUTA) tax, which is 6 percent of the first \$7,000 of each employee's wages.").

20. Eric Westervelt, *Pandemic-related fraud totaled billions. California is trying to get some of it back*, NPR (Oct. 18, 2022), <https://www.npr.org/2022/10/18/1128561539/pandemic-fraud-billions-california>.

To stop able members of the working class from continuing to take advantage of the seemingly lucrative unemployment system, federal and state governments should take care in construing and interpreting the eligibility requirements for unemployment. A central issue today is that “misconduct,” one of the paramount ways an employee can be disqualified from receiving unemployment benefits, has no consistent definition.²¹ One way to cure this is by having a clear and consistent statutory definition of what “misconduct” disqualifies an employee from collecting unemployment. While all fifty states have statutes that disqualify certain claimants from receiving unemployment compensation,²² the federal government does not provide a statutory definition nor specific guidance on what “misconduct” disqualifies a claimant.²³

Therefore, the type of conduct that disqualifies a claimant varies from state to state.²⁴ Some states do not even explicitly define “misconduct,” but rather depend on administrative and court interpretation.²⁵ In numerous instances, termination for poor performance still qualifies a claimant for benefits.²⁶ This leaves many business owners bearing the onus of contesting former employees’ claims for unemployment, even though they were terminated for cause.²⁷

This Note explains the need for a definite and consistent definition for the “misconduct” disqualification in unemployment insurance statutes, particularly in light of the impact of Covid. Without a consistent definition, businesses are often unjustly left bearing the cost of terminating employees for misconduct and dealing with subsequent litigation. This Note will further examine the differing state statutory interpretations, revealing the disparate impact of loose definitions and interpretations on the unemployment

21. See EMP. & TRAINING ADMIN., *Nonmonetary Eligibility*, 5-10-16 (U.S. Dep’t. of Lab. Mar. 10, 2023), <https://oui.doleta.gov/unemploy/pdf/uilawcompar/2022/nonmonetary.pdf>.

22. OFF. OF LEGIS. RSCH., THE CONN. GEN. ASSEMB., 94-R-0894, *Misconduct Disqualifications from Unemployment Compensation* (1994), <https://cga.ct.gov/PS94/rpt%5Colr%5Chtm/94-R-0894.htm>.

23. See OFF. OF UNEMP. INS. DIV. OF LEGIS., *Unemployment Compensation: Federal-State Partnership*, 11-12 (U.S. Dep’t. of Lab. 2019), <https://oui.doleta.gov/unemploy/pdf/partnership.pdf>.

24. *Id.*

25. See EMP. DEV. DEP’T STATE OF CAL., *Misconduct MC 5*, https://edd.ca.gov/en/uibdg/Misconduct_MC_5/#DischargeforMisconductConnectedWithMostRecentWork (last visited Mar. 12, 2023).

26. *Unemployment Insurance Benefits: Former Employee Eligibility and How to Challenge It*, LEXIS (2022), <https://plus.lexis.com/api/permalink/bd803572-7602-4c2e-9fce-a56407acaa1c/?context=1530671> [hereinafter Lexis].

27. Rebecca Rosenberg, *How Are Employers Affected by Unemployment?*, U.S. CHAMBER OF COM. (Oct. 21, 2021), <https://www.uschamber.com/co/start/strategy/how-employers-are-affected-by-unemployment>.

insurance system and small businesses.²⁸ Accordingly, a uniform, definite interpretation of “misconduct” across the states will untie the hands of many small businesses and safeguard the unemployment insurance system from misuse and inefficiency.

Part I of this Note provides an overview of the unemployment insurance (U.I.) system as a whole, including the history, the general rules, and the procedures that businesses must follow under the U.I. system, as well as how the federal and state governments interact concerning U.I.

Part II unpacks the “misconduct” disqualification of the U.I. system. Specifically, Part II explains the federal government’s current, limited role in eligibility requirements. Next, this section analyzes the current situation of California’s more liberal U.I. system, as well as its loosely defined statutory definition of “misconduct.” Finally, this section analyzes both Florida’s U.I. system and a more definite statutory definition of “misconduct.” In contrast to California, Florida provides a roadmap to consistency in statutory interpretation that will promote efficiency in the U.I. system and free businesses from increased tax rates that result from inflated unemployment costs.

Part III then illustrates why following Florida’s example in defining “misconduct” would be particularly impactful for small businesses post-Covid. Ultimately, this section concludes by addressing why the issue of an overly liberal unemployment system is important to everyone beyond just economics and small businesses through an analysis of natural law and work.

I. THE UNEMPLOYMENT INSURANCE SYSTEM

A. *History*

Due to the Great Depression of the 1930s, thousands of Americans were laid off as factory, mining, and other industrial jobs dried up.²⁹ Many people accustomed to the American tradition of hard-work were on the brink of starvation.³⁰ As a result, the United States created the current unemployment insurance system³¹ as part of President Franklin D. Roosevelt’s New Deal

28. *See infra* § B, C.

29. Jenny Higgins, *Great Depression - Impacts on the Working Class*, NFLD. HERITAGE (2007), <https://www.heritage.nf.ca/articles/politics/depression-impacts.php>.

30. *Id.*; *see also* *Great Depression History*, HISTORY CHANNEL (Jan. 12, 2023), <https://www.history.com/topics/great-depression/great-depression-history>.

31. 42 U.S.C. §§ 501-504, 1101-1108. The U.I. system provides temporary, partial wage replacement for workers who are unemployed through no fault of their own. For a good article on the

program.³² The system was initiated by: instituting a payroll tax on covered employers, providing broad standards for approval of State programs, and requiring all State tax funds to be deposited in the Federal Unemployment Trust Fund where grants were then authorized to each State to administer the State unemployment insurance program.³³

To receive these grants, “the States are required to meet certain standards of administration, including procedures to pay benefits when due, allowing unemployed workers an appeal procedure if they are denied benefits, and providing information about the operation of the program to the Federal Government.”³⁴ In doing so, the “Federal Government retains an overseer’s role in assuring that the States’ programs meet certain broad standards of administration and in channeling the collection and disbursement of funds for benefit payments.”³⁵ Despite federal oversight, the States operate their programs directly, and have the autonomy to determine “eligibility conditions, the waiting period to receive benefits, benefit amounts, minimum and maximum benefit levels, duration of benefits, disqualifications, and other administrative matters.”³⁶

Since its original enactment in 1935, the legal framework of the U.I. system has not undergone any substantial changes.³⁷ Because of this, the U.I. rules do not reflect the experience of the average worker or employer today and cannot meet the needs of the modern labor force.³⁸ Today, due to the cultural shift in how Americans view work because of Covid, there are plenty of jobs, yet the American workforce seemingly does not want to work.³⁹ Simply put, there is a stark dichotomy between today’s culture and workforce and the culture and workforce during the Great Depression.

At the time of the U.I. system’s enactment, the American workforce was desperate to work, yet there were no jobs.⁴⁰ Initially, there was no need to be

overview of the U.I., see Frans Pennings & Paul M. Secunda, *Towards the Development of Government Principles for the Administration of Social Protection Benefits: Comparative Lessons From Dutch and American Experiences*, 16 MARQ. BEN. & SOC. WELFARE L. REV. 316, 330-334 (2015).

32. *The New Deal*, HISTORY CHANNEL (March 28, 2015), <http://www.history.com/topics/new-deal>.

33. Daniel N. Price, *Unemployment Insurance, Then and Now, 1935-85*, 48 NO. 10 SOC. SEC. BULL. 23 (1985), <https://www.ssa.gov/policy/docs/ssb/v48n10/v48n10p22.pdf>.

34. *Id.*

35. *Id.*

36. *Id.* at 24.

37. Lisa Lawler Graditor, *Back to Basics: A Call to Re-Evaluate the Unemployment Insurance Disqualification for Misconduct*, 37 J. MARSHALL L. REV. 27, 28 (2003).

38. *Id.* at 28, 30.

39. BUREAU OF LAB. STAT., *supra* note 4.

40. Higgins, *supra* note 29.

overly concerned with the interpretation of the U.I. system's construction because it was functioning in a time of economic recession.⁴¹ In short, it addressed the exact problem it was created to solve: providing relief to those affected by joblessness, through no fault of their own.⁴² This is because the U.I. system's "two main objectives are to provide temporary and partial wage replacement to involuntarily unemployed workers and to stabilize the economy during recessions."⁴³

However, almost one hundred years have passed since its enactment. Like most federal aid programs, with the passage of time, many have found ways to take advantage of the U.I. system.⁴⁴ In fact, in June 2022, the U.S. Government Accountability Office added the U.I. system to its "High Risk Program based on the system's need for transformation."⁴⁵ Hence, without updating and defining the system as the economy and culture changed, the U.I. system serves a delusive purpose.⁴⁶ As it stands today, the U.I. system perpetuates this new wave culture of apathy created by Covid at the expense of American small businesses.⁴⁷

B. *General Rules and Procedures for Businesses under the U.I. System*

Businesses undoubtedly have an interest in the laws and administration of the U.I. system because they fund it.⁴⁸ Businesses fund the U.I. system

41. Price, *supra* note 33, at 22.

42. *Id.*

43. KATELIN P. ISAACS, CONG. RSCH. SERV., R46789, UNEMPLOYMENT INSURANCE: LEGISLATIVE ISSUES IN THE 117TH CONGRESS 1 (2021).

44. See generally Rick Newman, *Unemployment: How the Lazy Are Hurting the Needy*, U.S. NEWS & WORLD REP. (Apr. 3, 2012), <https://www.usnews.com/news/blogs/rick-newman/2012/04/03/unemployment-how-the-lazy-are-hurting-the-needy> (discussing growing anecdotal evidence suggesting able-bodied workers avoid seeking employment to reap unemployment benefits).

45. U.S. GOV'T ACCOUNTABILITY OFF., GAO-23-106586, UNEMPLOYMENT INSURANCE: DOL NEEDS TO ADDRESS SUBSTANTIAL PANDEMIC UI FRAUD AND REDUCE PERSISTENT RISKS, (2023), <https://www.gao.gov/products/gao-23-106586#:~:text=GAO%20found%20evidence%20of%20substantial,for%20the%20regular%20UI%20program> (assessing findings by Department of Labor) ("[There was an] increase in estimated improper payments from \$8.0 billion (9.2 percent estimated improper payment rate) for fiscal year 2020 to \$78.1 billion (18.9 percent estimated improper payment rate) for fiscal year 2021. For fiscal year 2022, DOL reported improper payments of \$18.9 billion (22.2 percent estimated improper payment rate).").

46. See generally Gerard Hildebrand, *Part III: Federal Standards and Enforcement: Federal Law Requirements for the Federal-State Unemployment Compensation System: Interpretation and Application*, 29 U. MICH. J.L. REFORM 527, *passim* (1996).

47. See BUREAU OF LAB. STAT., *supra* note 6; STATISTA, *supra* note 7; Kovalski & Sheiner, *supra* note 8.

48. See generally Albiston & Fisk, *supra* note 17, at 267.

through required taxes: both at the federal level through the Federal Unemployment Tax Act (FUTA) and at the state level through the State Unemployment Tax Act (SUTA).⁴⁹ FUTA is straightforward: businesses are required to pay “6% of the first \$7,000 each employee earns per calendar year, for a maximum annual contribution of \$420 per employee.”⁵⁰ Conversely, SUTA is more variable. There, businesses’ tax rates are determined by their number of employees, how much they have already paid into the U.I. system, and how many of their former employees have claimed benefits.⁵¹ This variability further complicated matters for businesses when Covid hit.

Covid burdened businesses’ unemployment tax because businesses are required to pay state unemployment taxes to every state in which their employees work.⁵² This becomes cumbersome with a large remote workforce⁵³ because an employee working from another state for even a day exposes an employer to business tax liability there.⁵⁴ For example, if a company located in Texas has employees working remotely in New York, California, and Colorado, then the company is liable to all four states for unemployment insurance taxes. For that reason, “[g]reater employee mobility and expanded telework options, therefore, are expressly discouraged by tax codes through compliance costs and double taxation.”⁵⁵ On top of accounting to multiple states due to remote workers, many businesses’ SUTA tax rates will skyrocket as a result of the massive amount of claims from Covid-19.⁵⁶ However, as of May 2020, “[twenty-six] states and the District of Columbia have declared . . . that COVID-19-related layoffs will not be charged against employers for purposes of calculating the experience ratings that determine their UI tax rates.”⁵⁷ This should soften the blow for businesses in those states. Nevertheless, with remote work

49. Rosenberg, *supra* note 27.

50. *Id.*

51. *Id.*; see also Jeff Oswald, *What Does an Unemployment Claim Cost an Employer?*, UNEMP. INS. SERVS. (last visited Mar. 12, 2023), <https://unemploymentservices.com/unemploymentclaimcost> (citing that each awarded unemployment claim can affect three years of U.I. tax rates).

52. Rosenberg, *supra* note 27.

53. *Id.*

54. D. Bunn et al., *Tax Policy After Coronavirus: Clearing a Path to Economic Recovery*, TAX FOUND. (Apr. 22, 2020), https://taxfoundation.org/coronavirus-economic-recovery/#_ftnref10.

55. *Id.*

56. Katherine Loughead, *More Than Half the States Will Protect Businesses from Certain COVID-19-Related Unemployment Insurance Tax Hikes*, TAX FOUND. (May 19, 2020), <https://taxfoundation.org/unemployment-insurance-tax-hikes-covid19/>.

57. *Id.*

becoming increasingly normal, businesses want a consistent application of U.I. law.

The need for consistency stems beyond taxes. The often more frustrating part of the U.I. system arises when former employees, who have been terminated for cause, proceed to file for unemployment. Traditionally, when a former employee files for unemployment, the state notifies the former employer, requesting it validate or contest the claim.⁵⁸ Because unemployment claims raise businesses' SUTA tax rates,⁵⁹ it is crucial to promptly contest invalid claims, such as those from employees terminated for misconduct.⁶⁰ For example, in Nevada, "an employer with an excellent experience rating will pay \$81.25 in [U.I.] taxes for each employee whose wages exceed the taxable wage base, while an employer with a poor experience rating will pay \$1,755 per employee whose wages exceed the taxable wage base."⁶¹ Typically, a business only has ten days to contest a claim, or the business forfeits their right to do so and faces potential punitive tax hikes.⁶² But, contesting the accuracy of the claim is layered and complex.

To appeal a claim, a business must first submit documentation to show why the claim is inaccurate.⁶³ Next, businesses are often required to attend hearings where they are interviewed about the truth of the claim.⁶⁴ In many states, the hearings function much like a trial despite not yet being a part of the judicial system. Either party can be represented by an attorney, present evidence, present witnesses, cross-examine, rebut, and confront witnesses, and even subpoena interested parties to appear.⁶⁵ However, even when the facts of the termination are established, and the former employee's claim is

58. Rosenberg, *supra* note 27.

59. See EMP. & TRAINING ADMIN., *Financing 2-7* (U.S. Dep't of Lab. Mar. 10, 2023), <https://oui.doleta.gov/unemploy/pdf/uilawcompar/2022/financing.pdf> (explaining that Federal law requires that states use a system of experience rating by which individual employers' contribution rates are varied on the basis of their "experience" with the risk of unemployment (i.e. the more an employer's employees claim, the higher their taxes will be); experience rating systems are designed to encourage employers to stabilize employment; equitably allocate the costs of unemployment; and encourage employers to participate in the system by providing eligibility information; the factor used to measure experience with unemployment is the basic variable that makes it possible to establish the relative incidence of unemployment among the workers of different employers).

60. Rosenberg, *supra* note 27.

61. See generally Loughead, *supra* note 56 (giving the example of how experience rating affects tax rates of businesses).

62. Rosenberg, *supra* note 27.

63. *Id.*

64. *Id.*

65. MANPOWER ADMIN., U.S. DEP'T OF LAB., *A Guide to Unemployment Insurance Benefit Appeals Principles and Procedures*, https://oui.doleta.gov/dmstree/pl/yellow_book.pdf

denied, they may be able to appeal the decision.⁶⁶ Once taken to the third level of appeals, which takes the case into the actual judicial system, an employer has already spent months fighting the claim with many more likely ahead.⁶⁷ In fact, “[t]he average claim can increase an employer’s state tax premium from \$4,000 to \$7,000 over the course of three years.”⁶⁸ To put it into perspective, an employer with a million dollar taxable payroll and a U.I. tax rate of 1% pays \$10,000 in unemployment tax premiums, but after claims are assessed to its account, the “rate goes up to 5%” and its “[p]remiums rise to \$50,000.”⁶⁹

To add insult to injury, many employers are advised by attorneys to proceed with caution when contesting unemployment claims.⁷⁰ Not only do they cost time and money, but the former employee “might even file a wrongful termination lawsuit that otherwise could have been avoided. And if the fired worker has friends who remain on the job, they too may doubt and distrust your company’s tactics.”⁷¹ Thus, many businesses are in a catch twenty-two: either invest resources to fight an inaccurate claim and still risk losing, or take the loss of the tax hike and save their time and money.⁷²

This conundrum is just one reason why having a consistent statutory definition of what constitutes “misconduct” can help businesses more efficiently contest unemployment claims. By pre-defining “misconduct” definitively, businesses can particularly document behavior in advance of future claims and will no longer be subject to varying appeal boards’ opinions.

C. *The State and Federal Relationship*

As explained above, both the states and the federal government play a role in the U.I. system through a partnership based on federal law but executed through state laws and by state employees.⁷³ To reiterate, federal

66. See Lexis, *supra* note 26; see also Rosenberg, *supra* note 27.

67. See Lexis, *supra* note 26 (providing that unemployment benefit may extend to individuals terminated for poor performance, making the pool of potential applicants for benefits even larger).

68. See Oswald, *supra* note 51.

69. *Id.*

70. Lisa Guerin, *Unemployment Benefits: How to Contest an Employee’s Claim*, NOLO (last visited Mar. 12, 2023), <https://www.nolo.com/legal-encyclopedia/unemployment-benefits-contesting-employees-claim-30348.html>.

71. *Id.*

72. See Loughead, *supra* note 56 (explaining how an employer can go from paying \$81.25 per employee to \$1,755 per employee with an increase in claims of unemployment).

73. See OFF. OF UNEMP. INS. DIV. OF LEGIS., *supra* note 23, at 1-2.

law establishes the general requirements for the U.I. system, but each state defines its own U.I. system within the federal requirements.⁷⁴ Unfortunately, this resulted in fifty-three different U.I. programs in the fifty states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.⁷⁵ These individual U.I. programs each determine independently the weekly benefit amount and the number of weeks of unemployment benefits available to unemployed workers.⁷⁶ Many states, but not all, “provide up to 26 weeks of [unemployment compensation] to eligible individuals who become involuntarily unemployed for economic reasons and meet state-established eligibility rules.”⁷⁷

The latitude states receive has been and remains controversial. Continued debates and campaigns for amendment highlight the need for more definite federal requirements.⁷⁸ In fact, the amount of autonomy given to the states and the entire federal-state partnership was itself debated at its genesis.⁷⁹ When Congress first considered U.I., “three options were discussed: (1) leave the matter entirely to the states; (2) create a totally federal system; or (3) develop a federal-state system.”⁸⁰ Congress chose the federal-state partnership for the following reasons: (1) “an exclusively Federal system would be cumbersome and would result in centralization of administrative functions and bureaucratic methods which might paralyze action;”⁸¹ (2) the “Federal Government would assume the leadership by removing the disadvantages in interstate competition that are always raised against purely State legislation involving costs to industry”⁸² but still allowing room for individual circumstances to be addressed uniquely thus, “uniformity where essential and diversity where necessary;”⁸³ and (3) an entirely federal system “would necessitate decisions at the very outset on all points which could not

74. *Id.*

75. ISAACS, *supra* note 43.

76. *Id.*

77. *Id.*

78. Hildebrand, *supra* note 46, at 527-29; *see generally* SAUL J. BLAUSTEIN, UNEMPLOYMENT INSURANCE IN THE UNITED STATES 211-64 (1993) (providing a history of 1965-1966 legislative efforts as well as a history of enactments through 1993); NAT'L COMM'N ON UNEMP. COMP., UNEMP. COMP.: FINAL REPORT, at 3 (1980) [hereinafter NCUC Report] (recommending various reforms); MURRAY RUBIN, FEDERAL-STATE RELATIONS IN UNEMPLOYMENT INSURANCE 1-4, 6 (1983) (discussing existing federal requirements and their desirability).

79. Hildebrand, *supra* note 46, at 528, 530.

80. *Id.* at 529; RUBIN, *supra* note 78, at 11-12.

81. COMM. ON ECON. SEC., SOC. SEC. IN AMERICA 93 (1937).

82. *Id.*

83. *Id.*

be left to administrative discretion.”⁸⁴ Prudently, Congress reasoned that mistakes on the federal level would hit much harder and wider than mistakes under a federal-state plan.⁸⁵ The 1935 Senate Finance Committee’s report emphasized that the legislation:

does not set up a Federal unemployment compensation system . . . except for a few standards which are necessary to render certain that the State unemployment compensation laws are genuine unemployment compensation acts and not merely relief measures, the States are left free to set up any unemployment compensation system they wish, without dictation from Washington.⁸⁶

Put another way, the states are granted broad discretion to establish their own unemployment compensation system.⁸⁷ Hence, the United States Department of Labor (USDOL) typically follows a two-pronged rule whenever a new requirement is placed on the states.⁸⁸ First, any new requirement “is construed as narrowly as possible while reasonably effectuating its purpose.”⁸⁹ Second, all “language that may be construed as leaving discretion to the states is broadly construed unless there are compelling reasons for a narrow construction.”⁹⁰

Although the rule gives deference to the states to construct their U.I. system as they see fit, the rule also reflects the need for federal law to step in under certain circumstances to ensure the U.I. system is properly serving its intended purpose.⁹¹ The 1970 draft legislation to implement the employment security amendments exemplifies how the federal government properly constrained the states’ discretion in order to ensure the U.I. system was effectively serving its purpose.⁹² In the amendment, the USDOL was called to define “work,” in accordance with the two-prong rule, to stop employees from “double dipping” in unemployment compensation.⁹³ So, the USDOL

84. *Id.* at 94.

85. *Id.*

86. Hildebrand, *supra* note 46, at 531 (quoting S. REP. NO. 74-628, at 12-13 (1935)).

87. Hildebrand, *supra* note 46, *passim*.

88. *Id.* at 547.

89. *Id.*

90. *Id.*

91. *Id.* This rule is important to acknowledge for this Note because it provides the basis for which the change being called for in this Note (uniform statutory definition of “misconduct”) can be made.

92. *Id.* at 549.

93. *Id.* at 548. See also UNEMP. INS. SERV., U.S. DEP’T OF LABOR, DRAFT LEGIS. TO IMPLEMENT THE EMP. SEC. AMENDS. OF 1970 H.R. 14705, at 47 (1970).

added a universal definition of “work” as “the performance of services for which remuneration is payable.”⁹⁴

In this example, federal law originally stated that “an individual who has received compensation during his benefit year is required to have had work since the beginning of such year in order to qualify for compensation in his next benefit year.”⁹⁵ Nevertheless, the accompanying Senate report left considerable discretion to the states, explaining: “The bill does not specify how much work would be required or whether it need be in covered employment. The committee believes that these matters should be left to the judgment of the individual States.”⁹⁶ In doing so, states were given the discretion to require as little as one hour of work in the benefit year.⁹⁷ In addition to this uncapped discretion in required work time, Congress did not indicate how broadly the term “work” should be construed.⁹⁸

Therefore, similarly to the issue of broad construction of “misconduct,” there were compelling reasons to define “work” for the purpose of effectuating the statute.⁹⁹ Without defining “work,” Congress allowed for unremunerated services like household chores or volunteer activities to be included in the term “work” which “would render the requirement meaningless because every individual likely would meet the ‘work’ test.”¹⁰⁰ Thus, by specifically defining “work” as “the performance of services for which remuneration is payable,”¹⁰¹ the USDOL prevented further abuse of the unemployment compensation system.

Here, this example is important because it illustrates how the USDOL is able to add a definition that limits state discretion under a broad statute without creating problems for the states.¹⁰² In this instance, USDOL records do not identify any case where a conformity issue was raised based on the state’s definition of “work.”¹⁰³ Therefore, as it did with “work,” the USDOL

94. Hildebrand, *supra* note 46, at 549.

95. Employment Security Amendments of 1970, Pub. L. No. 91-373, § 121(a)(7), 84 Stat. 695, 701 (codified as amended at 26 U.S.C. § 3304(a)(7) (1994)).

96. S. REP. NO. 91-752, at 21 (1970).

97. Hildebrand, *supra* note 46, at 548.

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.* at 549.

102. *See id.* at 544.

103. UNEMP. INS. SERV., *supra* note 93; U.S. DEP’T OF LAB., *Unemployment Insurance Program Letter No. 18-92* (Mar. 4, 1992), <https://www.dol.gov/agencies/eta/advisories/unemployment-insurance-program-letter-no-18-92>; *see also* Hildebrand, *supra* note 46, at 549 (explaining that a conformity issue exists when the state law does not agree with federal law: This may occur either because the state law

should define “misconduct” for the states, primarily to prevent former employees fired for misconduct from collecting unemployment compensation.

II. THE “MISCONDUCT” DISQUALIFICATION OF THE UNEMPLOYMENT INSURANCE SYSTEM

A. *Federal Standard*

Despite the creators of the U.I. system intending to aid Americans who are involuntarily unemployed due to economic recession,¹⁰⁴ the legislation is still yet to define what it means to be “involuntarily unemployed.”¹⁰⁵ As a result, who is able to claim unemployment is completely left up to the states,¹⁰⁶ subject only to the federal government’s monetary requirements, such as length of employment and work done, as well as nonmonetary requirements that claimants be able, available, and actively seeking work.¹⁰⁷

While almost all states explicitly disqualify employees who leave work voluntarily without cause, or have been discharged for misconduct connected to work, some do not explain what these two criteria may mean.¹⁰⁸ Generally speaking, people who are terminated for poor performance, lacking the necessary skills for the job, or simply being a poor fit¹⁰⁹ still qualify for unemployment benefits.¹¹⁰ For instance, only about half the states specifically disqualify applicants who are fired for reasons relating to drugs and alcohol.¹¹¹

Because each state administers and designs its own U.I. program, “reciprocity rate[s] differ[] considerably across the country.”¹¹² The way a

does not agree with federal law or because state law omits a provision required by federal law. The conflict may be created by the law itself or through judicial or administrative interpretation.).

104. ISAACS, *supra* note 43.

105. See OFF. OF UNEMP. INS. DIV. OF LEGIS., *supra* note 23, at 11-12.

106. *Id.*

107. See EMP. & TRAINING ADMIN., *supra* note 21. Actively seeking work is also conditioned in many states which is an issue all together separate especially as it comes to post-covid workforce as many people are able to continue to claim unemployment by arguing that other jobs are no longer suitable for them because they do not allow them to work from home; see generally Newman, *supra* note 44.

108. See OFF. OF UNEMP. INS. DIV. OF LEGIS., *supra* note 23, at 11-12; see also EMP. & TRAINING ADMIN, *supra* note 21; *Misconduct MC 5*, *supra* note 25.

109. See Lexis, *supra* note 26.

110. *Id.*

111. See EMP. & TRAINING ADMIN., *supra* note 21.

112. Emerson Sprick, *What Share of the Unemployed Receive Unemployment Insurance? Context, Trends, and Influences*, BIPARTISAN POL’Y CENT. (Mar. 15, 2022), <https://bipartisanpolicy.org/>

state administers and defines eligibility affects “reciency by impacting both the number of workers who are covered by the program and the portion of those eligible who claim benefits.”¹¹³ Therefore, states with stricter eligibility criteria can reduce reciency rates by making fewer unemployed workers eligible for benefits while also deterring frivolous claims because “in states with stricter eligibility requirements, fewer unemployed workers believe they are eligible, reducing program take-up by decreasing application rates.”¹¹⁴

Thus, it would behoove legislators to uniformly define “misconduct” to provide consistency among the states in reciency.¹¹⁵ This would in turn make the system more efficient in hearing claims by providing definitive criteria while reducing meritless claims.¹¹⁶ Without this, inconsistency among states will continue to manifest unintended repercussions.

B. *California Standard*

Since Covid, California has been struggling to get back on its feet, particularly when it comes to unemployment insurance, and is far from a stable position. Daniela Urban, executive director of the Center for Workers’ Rights, explained that if a major crisis hit the unemployment system again, such as a recession, it would not be able to function as it should.¹¹⁷ Jim Patterson, vice chair of the state’s Committee on Accountability and Administrative Review, commented that even with the changes California has been making to its unemployment insurance system, it can still be defrauded.¹¹⁸ During Covid, “[i]n California alone, fraudsters using stolen social security numbers and stolen or made up names made off with what state officials conservatively estimate is \$20 billion. That’s about 11% of the

explainer/what-share-of-the-unemployed-receive-unemployment-insurance-context-trends-and-influences/ (for example, “[i]n 2019, state-level reciency rates ranged from 9.5% in North Carolina to 59.0% in New Jersey”).

113. *Id.*

114. *Id.*

115. See Hildebrand, *supra* note 46, at 549; U.S. DEP’T OF LAB., *supra* note 93, at 53; Employment Security Amendments of 1970, *supra* note 95 (concerning how the USDOL redefined “work” to limit the disparity among states in defining work, illustrating how defining “misconduct” could provide same benefits to U.I. system).

116. See Hildebrand, *supra* note 46; U.S. DEP’T OF LAB., *supra* note 93, at 54; Employment Security Amendments of 1970, *supra* note 95.

117. Grace Gedye, *Is California’s Beleaguered Jobless Benefits Agency Ready for a Recession?*, CALMATTERS (Dec. 5, 2022), <https://calmatters.org/economy/2022/12/unemployment-benefits-california-edd/>.

118. Westervelt, *supra* note 20.

\$177 billion in jobless benefits paid out for COVID-19 relief.”¹¹⁹ It was not difficult to defraud the system.¹²⁰ To illustrate, McGregor Scott, former U.S. Attorney for the Eastern District of California, explained that all fraudsters needed was a social security number.¹²¹

As a result of Covid, California’s unemployment insurance trust fund ran out of money and the federal government had to loan “California billions to keep benefits flowing, and the state still is on the hook to pay back about \$18 billion.”¹²² Although California was not the only state that had to borrow from the federal government due to Covid, only four other states today still have debt,¹²³ and “California’s debt is roughly double the size of the other four combined.”¹²⁴

Consequently, in order to pay off the current debt, California’s “federal tax on employers will automatically increase by \$21 per employee in 2023, and ratchet up by an additional \$21 per employee per year until the loan is repaid.”¹²⁵ Despite this growing burden on employers, as California’s system stands today, “if the agency can’t determine whether you’re eligible [for unemployment benefits] within 14 days, it will keep paying benefits while they sort out the issue,” which can take over 16 weeks.¹²⁶

Compounding California’s Covid difficulties and loose eligibility determinations, California’s legislature has never defined “misconduct.”¹²⁷ Rather, California has a single meager disqualification statute that presumes employees are not fired for misconduct.¹²⁸ Instead of giving disqualifications, as it is titled, the statute specifies good causes for voluntarily leaving work.¹²⁹ A terminated employee is “presumed to have been discharged for reasons other than misconduct in connection with his or her work and not to have voluntarily left his or her work without good cause.”¹³⁰ This presumption is only overcome if “his or her employer has given written notice to the contrary to the department as provided in Section

119. *Id.*

120. *Id.*

121. *Id.*

122. Gedye, *supra* note 117.

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. *Misconduct MC 5, supra* note 25.

128. CAL. UNEMP. INS. CODE § 1256 (2023).

129. *Id.*

130. *Id.*

1327, setting forth facts sufficient to overcome the presumption.”¹³¹ In addition, “leav[ing] employment to accompany [a] spouse or domestic partner to a place or to join him or her at a place from which it is impractical to commute to the employment,”¹³² is considered good cause.

Unsurprisingly, at the time of writing, California had 30.8 million new and reopened unemployment claims and paid out \$192 billion in total benefits since March 2020, with 81.1% of these claims being paid out within one week of the first certificate received.¹³³ Of the 30.8 million claims, a mere 212,571 claims were found ineligible because they did not meet California’s eligibility requirements.¹³⁴ In other words, a paltry 10% of claims were denied, despite tens of thousands of claims coming from incarcerated persons who then received benefits.¹³⁵ This model is neglectful and one that must be avoided.

C. Florida Standard

In contrast to California, Florida has the lowest reciprocity rate for unemployment benefits in the United States.¹³⁶ Although many are critical of Florida’s low reciprocity rate, the attacks on Florida’s U.I. system do not relate to its statutory definition of “misconduct.”¹³⁷ Instead, Florida provides a good example of how “misconduct” should be defined because it leaves room for interpretation by including language such as “not limited to” while still providing a clear statutory definition with specific examples of conduct that would disqualify a former employee from collecting benefits.¹³⁸ Florida Statute § 443.036 (29) defines misconduct as:

“Misconduct,” irrespective of whether the misconduct occurs at the workplace or during working hours, includes, but is not limited to, the following, which may not be construed in *pari materia* with each other: (a)

131. *Id.*

132. *Id.*

133. *Unemployment Benefits Data*, EMP. DEV. DEP’T, STATE OF CAL., <https://edd.ca.gov/en/newsroom/facts-and-stats/dashboard/> (last visited Jan. 11, 2024).

134. *Id.*

135. Gedye, *supra* note 117.

136. Karen Woodall, *4 Steps to Fix Florida’s Broken Unemployment Insurance Program*, FLA. POL’Y INST. (Oct. 6, 2020), <https://www.floridapolicy.org/posts/four-steps-to-fix-floridas-broken-unemployment-insurance-program>.

137. *Id.* Those critical of Florida’s U.I. system unsurprisingly come from the employee side calling for larger payments and expanded benefit periods funded by higher taxes to employers.

138. See FLA. STAT. ANN. § 443.036(29) (LexisNexis 2023).

Conduct demonstrating conscious disregard of an employer's interests and found to be a deliberate violation or disregard of the reasonable standards of behavior which the employer expects of his or her employee. Such conduct may include, but is not limited to, willful damage to an employer's property that results in damage of more than \$50, or theft of employer property or property of a customer or invitee of the employer. (b) Carelessness or negligence to a degree or recurrence that manifests culpability or wrongful intent, or shows an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his or her employer. (c) Chronic absenteeism or tardiness in deliberate violation of a known policy of the employer or one or more unapproved absences following a written reprimand or warning relating to more than one unapproved absence. (d) A willful and deliberate violation of a standard or regulation of this state by an employee of an employer licensed or certified by this state, which violation would cause the employer to be sanctioned or have its license or certification suspended by this state.¹³⁹

Under Florida law, "misconduct" occurs where an employee:

(e) 1. [violates] an employer's rule, unless the claimant can demonstrate that: a. He or she did not know, and could not reasonably know, of the rule's requirements; b. The rule is not lawful or not reasonably related to the job environment and performance; or c. The rule is not fairly or consistently enforced. 2. Such conduct may include, but is not limited to, committing criminal assault or battery on another employee, or on a customer or invitee of the employer or committing abuse or neglect of a patient, resident, disabled person, elderly person, or child in her or his professional care.¹⁴⁰

Clearly, Florida has taken care to enumerate the common situations, in the employment context, that would lead to termination from employment outside of economic layoff. These include conscious disregard of an employer's interests, willful damage or theft, culpable carelessness or negligence, substantial disregard of obligations, chronic absenteeism or tardiness (including unexcused absence after warnings against absences), violation of employer's rules, and criminal assault and battery.¹⁴¹ Further,

139. *Id.* § 443.036(29)(a)-(d).

140. *Id.* § 443.036(29)(e).

141. *Id.* § 443.036(29).

beyond the above definition of “misconduct,” Florida details disqualifying situations, such as drug use, in a separate disqualification section.¹⁴²

All the aforementioned situations are objectively within an employee’s control and consonant with the universal purpose of the U.I. system: to provide relief to the “involuntarily unemployed.”¹⁴³ Florida is a good example to follow federally because Florida’s statutory definition both adheres to the federal purpose, and uses “not limited” language. Thus, it still leaves discretion to the states to further define and interpret their own eligibility statutes beyond this baseline. Therefore, Florida’s way of defining “misconduct” provides a definitive baseline that best effectuates the U.I. system’s actual purpose efficiently and consistently, while still providing latitude to the states.

III. CALL FOR CHANGE

A. *Small Businesses*

“The Small Business Administration (SBA) defines a small business as a firm that has fewer than 500 employees.”¹⁴⁴ In the United States, there are 33.2 million small businesses with 5.4 million having fewer than 20 employees.¹⁴⁵ Employers that fall under this umbrella account for almost “99.9 percent of all US businesses.”¹⁴⁶ Importantly, small businesses create 1.5 million jobs annually “and account for 64% of new jobs in the US.”¹⁴⁷ In spite of that, “20 percent of small enterprises fail in the very first year, and nearly 50 percent of small startups fail within the first five years.”¹⁴⁸ In conjunction with the financial difficulties of starting a business, “[o]ne of the top challenges that small businesses face is the poor quality of labor. In fact, 52 percent of the [small business owners] stated that [their biggest] problem . . . was labor quality[, explaining] that it’s hard to find qualified individuals to hire.”¹⁴⁹

142. FLA. STAT. ANN. § 443.101 (LexisNexis 2023).

143. ISAACS, *supra* note 43.

144. Maryam Mohsin, *10 Small Business Statistics You Need To Know For 2023*, OBERLO (Jan. 28, 2023), <https://www.oberlo.com/blog/small-business-statistics#:~:text=your%20free%20trial-,1.,has%20fewer%20than%20500%20employees>.

145. *Id.*

146. *Id.*

147. Chamber of Commerce Team, *Small Business Statistics*, CHAMBER OF COM., <https://www.chamberofcommerce.org/small-business-statistics/> (last visited Mar. 3, 2024).

148. Mohsin, *supra* note 144.

149. *Id.*

The difficulties of finding qualified employees only adds to the pressure placed on small businesses from Covid. Over 70% of U.S. small businesses shut down in March 2020.¹⁵⁰ In a post-Covid survey on what should be done to help small businesses, 45% of small business owners replied that they wanted the federal government to lower or simplify taxes.¹⁵¹ Unfortunately for many small business owners, their taxes are only going to increase because of Covid. This is due to a multitude of factors previously mentioned in this Note such as: paying into multiple states' U.I. funds due to remote workers;¹⁵² an increase in U.I. tax rates because of the surge of unemployment claims from Covid;¹⁵³ and paying increased tax rates per employee to pay down state debt to the federal government from Covid relief loans, like in California.¹⁵⁴

Unsurprisingly, California is one of the three worst states for small businesses' taxes.¹⁵⁵ In contrast, Florida is among the friendliest states to small businesses based on six factors: tax climate, consumer spending, rate of new entrepreneurs, business survival rate, labor costs, and the effect of climate change.¹⁵⁶ Florida is also encouraging for small businesses post-Covid, as “[e]ntrepreneurs in Florida, Texas, and North Carolina have seen a net increase in new businesses of 29,995, 15,656, and 14,581 respectively, since 2020.”¹⁵⁷

All in all, uncertainty is a major factor that can impact small businesses.¹⁵⁸ The unprecedented global pandemic of Covid certainly disrupted many small business operations and will continue to have unpredictable effects on businesses that no one can truly control. But, some control and certainty can be given back to small businesses by federally adopting a statutory definition for “misconduct” similar to Florida’s.¹⁵⁹ Small businesses are already struggling with finding qualified laborers.¹⁶⁰ The

150. *Id.*

151. Andrew Martins, *The Best States for Small Businesses in 2022*, BUS. NEWS DAILY (Jan. 3, 2024), <https://www.businessnewsdaily.com/15256-best-states-for-smbs.html>.

152. Rosenberg, *supra* note 27.

153. Loughhead, *supra* note 56; *see also* EMP. & TRAINING ADMIN., *supra* note 59, at 2-3.

154. Gedye, *supra* note 117.

155. Martins, *supra* note 151.

156. *Id.*

157. Cassie Bortorff and Kelly Main, *Ranked: The Best States To Start a Business In 2023*, FORBES ADVISOR (Nov. 30, 2022), <https://www.forbes.com/advisor/business/best-states-to-start-a-business/>.

158. Mohsin, *supra* note 144.

159. *See infra* § I.B; *see also infra* § II.C.

160. Mohsin, *supra* note 144.

already inflated taxes from Covid¹⁶¹ should not be compounded by paying for or challenging employees who did not do their job.¹⁶²

B. *Natural Law*

While this Note proposes changes to the United States U.I. system to help small businesses, it also hopes that a universal and definite statutory definition of “misconduct” will assist in undercutting the pervasive apathetic attitude in America’s workforce today. Work, and more importantly, what we derive from work, is fundamental to being human.¹⁶³ Thus, a basic understanding of the natural law principles of how work dignifies the human person is necessary to understanding that the exigency of this issue (of a liberal U.I. system that enables an apathetic workforce) is universal by the nature of humanity, rather than political affiliation. This is because:

Human beings are social creatures in the sense that they require interaction with other humans to achieve their highest aim, which is to develop their inherent talents in service to the common good. It is the human individual, not the community, who is the object of all social life. Importantly, however, by striving for the common good the individual will realize his/her own potential. Thus, all social institutions—from schools, to bowling leagues, to local, state, and federal governments, etc.—are legitimate to the extent they permit individuals to develop their own talents and abilities while serving the common good through the licit goals of the institution.¹⁶⁴

Following this reasoning, an unemployment system that allows people to believe it is beneficial to work poorly or even not at all, is an illegitimate social institution. This is because “human work is crucial to the development of the person.”¹⁶⁵ “Work is an essential expression of the person.”¹⁶⁶ More importantly, it is through work that a person is “capable of acting in a

161. D. Bunn et al., *supra* note 54; Gedye, *supra* note 117; Westervelt, *supra* note 20.

162. Oswald, *supra* note 51.

163. *Laudato Si'*, *supra* note 1.

164. John M. Czarnetzky, *American Bankruptcy Law and Catholic Social Theory*, in *AMERICAN LAW FROM A CATHOLIC PERSPECTIVE: THROUGH A CLEARER LENS* 229, 230 (Ronald J. Rychlak ed.) (2015).

165. *Id.*

166. *COMPENDIUM OF THE SOCIAL DOCTRINE OF THE CHURCH*, ¶ 271 (2005).

planned and rational way, capable of deciding about himself, and with a tendency to self-realization.”¹⁶⁷

Simply put, work is important because it develops the human person, and thus, dignifies him. It does not matter how distinguished or valuable the person’s work or contribution is; what matters is that by working, the person increases their “human capital.”¹⁶⁸ Work increases a person’s “human capital” by changing the person performing the labor either by an “increase in knowledge, exercise of entrepreneurial creativity, or development of virtues associated with work such as diligence, organization, [and] prudence.”¹⁶⁹ But it is also important to remember that

each man is responsible for his self-fulfillment. . . . He is helped, and sometimes hindered, by his teachers and those around him; yet whatever be the outside influences exerted on him, he is the chief architect of his own success or failure. Utilizing only his talent and willpower, each man can grow in humanity, enhance his personal worth, and perfect himself.¹⁷⁰

The dignity of the human person is sacrificed for comfort and apathy by overly liberal social assistance programs. This is not to say that social assistance programs, like the U.I. system, are bad or unnecessary. On the contrary, they are vital to economic stability. However, as stated by Pope Francis, “[h]elping the poor financially must be a provisional solution in the face of pressing needs[, but] the broader objective should always be to allow them a dignified life through work.”¹⁷¹ Accordingly, it is paramount that these programs serve the pressing needs of the poor with temporary relief while spurring them on to find dignity in work and increase their human capital.

CONCLUSION

With the chaos that encapsulated the United States’ U.I. system as a result of Covid, it is clear today that, as constructed, the U.I. system is no longer serving its two main objectives: “to provide temporary and partial wage replacement to involuntarily unemployed workers and to stabilize the

167. *Id.* ¶ 270 (quoting Pope John Paul II, *Laborem Exercens* [Encyclical on Human Work] ¶¶ 589-90 (1981)).

168. Czarnetzky, *supra* note 164, at 231.

169. *Id.* at 231-32.

170. Pope Paul VI, *Populorum Progressio* [Encyclical on the Development of Peoples] ¶ 15 (1967).

171. *Laudato Si’*, *supra* note 1.

economy during recessions.”¹⁷² Instead, many Americans able to work, whom the U.I. system was not built to assist, are living off its benefits at the expense of others. Although damage is already done in terms of fraud and debt accrued from the unprecedented pandemic, there is a change that could help ease the already loathsome burden on small businesses' backs.

Despite the legal framework of the U.I. system not undergoing any substantial changes since its enactment in 1935,¹⁷³ that does not mean it should not change. As exemplified by the 1970 amendment to the statutory definition of “work,” the USDOL can add a definition that limits state discretion under a broad statute to ensure the unemployment insurance system is properly serving its intended purpose.¹⁷⁴

By adopting a statutory definition for “misconduct” similar to Florida’s, the federal government could provide consistency in statutory interpretation that will promote efficiency in the U.I. system, both in appeals and initial determinations; free businesses from increased tax rates that result from inflated unemployment costs; and promote the dignity of the human person through work.

172. ISAACS, *supra* note 43.

173. Graditor, *supra* note 37.

174. Hildebrand, *supra* note 46; U.S. DEP’T OF LAB., *supra* note 93; Employment Security Amendments of 1970, *supra* note 95.