UNEMPLOYMENT INSURANCE REFORM FOR MOMS

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Imagine this scenario. It is 1990. Relatively few residents of the United States were born between 1970 and 1985, so relatively few people have entered the job market recently, and the trend is likely to continue.¹ Many new jobs will need to be filled in the coming years. Most of those jobs are likely to be in service industries, where pay rates are often lower than in manufacturing. Employers look around and ask, who will they find to employ? What they see is mothers:² one of the few groups of people with relatively low labor force participation is young women with young children. To get these women to enter the labor force in large numbers, employers realize that they have to make it possible for mothers to satisfy their responsibilities at home at the same time that they are satisfying their responsibilities at work. Mothers will need convenient and affordable child care and transportation. They will need flexibility, including paid leave when they are sick or when they need to miss work to attend to a child’s illness or emergency. They will need a decent rate of pay so that they can pay for child care and still make money. They will need access to health care for themselves and their children. Employers busy themselves improving their employment practices, including better pay, more flexible schedules, subsidized health insurance, extending benefits to part-time workers, and providing paid sick and annual leave. Millions of women decide that they and their families will be better off

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2. See id. at 85-89; Douglas J. Besharov, The Past and Future of Welfare Reform, PUB. INT. 4, 10 (Winter 2003) (employers “ran out” of married mothers to hire and began hiring single mothers in the 1990s).
if they enter the labor force or increase their participation, and employers breathe a sigh of relief.\textsuperscript{1}

The scenario is, obviously, a fantasy except for one point: millions of young women with young children have in fact entered the paid labor force since 1990.\textsuperscript{4} Employers have not, however, paid the price for their expanded workforce. Instead, the principal incentives have come from changes in federal public benefit and tax expenditure policies. Some of the incentives have been in the form of "pulls," such as increases in the Earned Income Tax Credit (EITC) and the refundable child tax credit.\textsuperscript{5} Others have been in the form of "pushes," such as the work participation requirements and sanction policies of welfare reform and similar changes in other public benefit programs.\textsuperscript{6} None of these changes has solved the basic problem, however, which is that employment practices remain heavily incompatible with parental responsibilities. Employers have had to make few of the necessary changes to accommodate workers who are parents.\textsuperscript{7} When federal public benefit and tax expenditure policies helped to expand the work force and increase family dependency on earnings, the pressure was taken off of employers. The failure of employers to change their practices remains an issue, however, because mothers and fathers lose their jobs when they try to meet family responsibilities while working for pay. One consequence is that, when they do lose their jobs, most states deny them the partial wage replacement benefit called unemployment insurance (UI).

The question I am asking in this essay is this: If eligibility for unemployment benefits were expanded to make benefits more available to parents leaving the work force or reducing their labor force engagement because of parental responsibilities, who should pay for the increased costs?


\textsuperscript{5} See infra notes 27-57 and accompanying text.

\textsuperscript{6} See infra notes 58-70 and accompanying text.

\textsuperscript{7} See, e.g., Rachel Arnow-Richman, Accommodation Subverted: The Future of Work/Family Initiatives in a "Me, Inc." World, 12 TEX. J. WOMEN & L. 345 (2003) (employment shifting to a "me, inc." approach in which accommodations for caregiving are not provided).
Feminists have argued, with the concurrence of others on the left, that UI eligibility should be expanded to take into account the family responsibilities borne by many women in the labor force. They have made a fully persuasive case for the proposition that the families of women who meet their responsibilities concurrently at home and at work should not be the ones who suffer the entire financial loss when a mother's labor force participation is interrupted or reduced because of her family responsibilities. By advocating for using UI as the means to cover—or at least share the costs of—labor force participation interruptions and reductions experienced by parents, feminists and allies are, inferentially, advocating that employers are the proper group to pay the increased cost of UI. But the explicit case needs to be made for considering recent changes in federal public benefits and tax expenditure policies as part of the rationale for putting the costs of enhanced UI eligibility on employers.

My argument is that the recent changes in federal public benefits and tax expenditure policies have, in effect, insulated employers from doing what would have happened in my fantasy scenario. The increased costs that employers should be paying to lure young women with young children into the paid labor force and to keep them there is instead being paid by the families and by federal and state taxpayers. Employers have not had to increase pay or benefits or modify employment practices to reduce work-family conflicts. As a result, parents with caretaking responsibilities lose their jobs or are forced into the part-time job market. Given the benefits


10. See generally WILLIAMS, supra note 8.
enjoyed by employers in getting young mothers into the workforce without paying the full cost, employers should not be able to avoid the relatively low cost of increasing unemployment insurance coverage for these workers.

The public benefit programs at issue are Temporary Assistance to Needy Families (TANF), Food Stamps, State Child Health Insurance Program (SCHIP), child care subsidies, and public housing. The principal tax expenditure policy is the Earned Income Tax Credit (EITC).\textsuperscript{11} All of these programs have a work requirement applicable to some or all participants, or they provide subsidies to people with earnings. All of the programs are targeted at low-income parents. All of them can have an impact on increasing the labor pool and on enhancing the value of the wage that the worker receives. All of them demand worker discipline because losing a job means losing eligibility for vital aid as well as earnings. As the result of the combined effect of programs such as these, employers have a larger pool of workers from whom to choose and employers can resist pressure to increase wages and benefits. Employees, on the other hand, have more incentive to remain employed and to make few demands on their employers because the costs of leaving work are greater than continuing in an unfavorable employment situation.

Unemployment insurance is paid for by taxes on employers.\textsuperscript{12} Expanding UI eligibility to respond to employment issues related to work/family conflicts, therefore, would result in higher costs to employers. In the current system, almost all of the costs of work/family conflict are placed elsewhere. Families pay when a caregiver loses employment and no temporary wage or income replacement is available, whether through unemployment insurance or welfare. Taxpayers generally pay to the extent that unemployed caregivers qualify for partial income replacement in the form of public benefits such as welfare, food stamps, or housing assistance. Em-

\textsuperscript{11} The refundable child tax credit, modified in the first tax reduction bill of the second Bush administration, also requires earnings as a prerequisite to eligibility. See Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, § 201, 115 Stat. 38 (2001) (codified as amended at 26 U.S.C § 24 (2004)). Because it was enacted only in 2001, however, it cannot help to explain earlier changes in labor force participation.

ployees could pay through a payroll tax to fund, for example, temporary disability insurance available to parents after the birth or adoption of a child. Employees who are parents could be made to pay through a payroll tax applicable only to them. The question is whether changes in public benefits and tax expenditure policies justify shifting some of the costs of work/family conflicts to employers through expanding UI eligibility.

Before going further, two baseline questions must be asked: Why is it not enough to establish that employees need unemployment insurance coverage when they leave or reduce labor force engagement due to family responsibilities? Why is it also important to establish that employers are the appropriate group on which to place the tax burden to fund the expansion of unemployment insurance coverage? There are at least two reasons, and the difference between them is the audience.

The first audience is the many workers who are navigating between home and work. They well understand that their lives are stressed and overburdened, but they may lack reasons that go beyond the personal. They may be told that they make little money because they lack skills or that their problems come from having too many children or children with unusual challenges. Part of my project is to add my voice to the chorus of those who identify systems that contribute to the harshness of life for women who are concurrently meeting their responsibilities at home and at work. A key systemic issue is that public benefit and tax expenditure policies have pushed and pulled women with young children into increasing their labor force participation but have not, at the same time, pushed and pulled employers into changing their employment practices. When more women understand these connections, they may also understand that expanded unemployment insurance eligibility is a small element of the changes to which they should feel entitled. They should not have to beg for this change based on their need; they should be able to demand this change based on the contributions their labor at home and at work make to the larger society.

The second audience is the many state legislators who must vote on changes to unemployment insurance. In my experience, most in this audience are prepared to accept the claims of employers that raising their unemployment insur-
ance tax is unfair, and that to do so would mark the state as unfriendly to business. The persuasion burden on advocates is, therefore, high. Relying on arguments about need is insufficient, because many people are in need for many reasons. My project is to offer an alternative argument, one that assesses the employers' claims about cost in light of the other public benefit and tax expenditure policies. Using this information, advocates should be able to argue that employers are experiencing artificially low costs for workers because of the public benefits and tax expenditure policies that push and pull mothers with young children into the market. Taxpayers have been doing their part in helping low-income families. Employers, however, have not had to spend what would otherwise have been demanded by workers who are also parents caring for young children. It is not unfair, then to demand that they give back a small portion of what is, in effect, a subsidy in the form of a larger unemployment insurance tax.

I. SUMMARY OF ESSENTIAL UI CHANGES

Because families have come to rely on the earnings of women, the hardships suffered when a woman becomes unemployed can be severe. Job loss substantially increases material hardship, including eviction, nonpayment of housing costs, not having a telephone, and the like. Some of this hardship is ameliorated when the unemployed woman has access to partial wage replacement through unemployment insurance, but women are fifteen percent less likely than men to collect unemployment insurance benefits. Women who recently left welfare are nearly one-third less likely than other women to qualify for UI.

The unemployment insurance system was designed with

13. See Um'rani & Lovell, supra note 8 (discussing UI and women).
16. Heather Boushey & Jeffrey B. Wenger, Ctr. for Economic & Policy Research, UI Is Not a Safety Net for Unemployed Former Welfare Recipients 5-6 (2003)(explaining that former welfare recipients are less likely to be eligible for UI under the present rules due to novelty, brevity, and the intermittent nature of work experience, low wages, and the need for employment compatible with family responsibilities).
the "ideal worker" in mind, that is, the man who could focus
on work and call on others, such as a wife, to provide house-
hold and child care labor.\footnote{See Williams, supra note 8, at 110-11; Rebecca Smith et al., Nat'l Employment Law Project, Between a Rock and a Hard Place: Confronting the Failure of State Unemployment Insurance Systems to Serve Women and Working Families 2 (2003).} Changes in UI in recent decades have made it more difficult for caregivers to qualify.\footnote{See Smith et al., supra note 17, at 2-3; see also Michael B. Katz, The Price of Citizenship: Redefining the American Welfare State 225-26 (2001).} To make unemployment insurance more available to low-income women with children, eligibility rules need to be changed to take into account the larger degree of responsibility that women take for family care.\footnote{See Maranville, Changing Economy, supra note 8, at 323-24; Maranville, Feminist Theory, supra note 8, at 1091-92; Smith et al., supra note 17, at 6-7. The Smith paper discusses a Texas study that found that "three times as many women as men report leaving work for reasons associated with domestic circumstances," and notes that the "failure of 'male breadwinner model' to accommodate the experiences of claimants... may explain a significant part of the gender gap in [UI] recipiency." Id.} Five changes are widely advo-
cated:

a. good cause for leaving work needs to include fulfilling family caregiving responsibilities, such as caring for a sick child or other relative, moving to accompany a relocating family member, remedying disruptions in child care, or attending to a child's school problems;

b. good cause also needs to give women with serious family problems such as domestic violence opportunities to seek safety;

c. the requirement that a worker be available for work needs to include part-time as well as full-time work;

d. minimum earnings requirements, used by states to ensure that unemployment insurance is available only to people who are committed to the labor force, need to be


\footnote{See id. at 5-6 (finding that one in four women are employed part-time, i.e., less than 35 hours per week, compared with one in ten men); see also Vroman, Effects of Welfare Reform, supra note 20; Vroman, Issue Brief, supra note 12.}
changed to minimum hours of work requirements;\textsuperscript{23} and

e. hours of work performed in recent quarters (alternative base period) need to be counted so that people with intermittent work histories, such as caregivers, qualify for unemployment insurance.\textsuperscript{24}

None of these changes is cost-free. Cost estimates are not perfect, but one respected analyst has suggested that the range is approximately $100 million in 1996 dollars, a 0.5% increase in costs over the 1998 costs.\textsuperscript{25}

\section*{II. "Push & Pull" Public Benefit and Tax Expenditure Policies}

To understand the synergy of federal public benefit and tax expenditure policies on the costs of low-wage workers to employers, it is useful to examine two of the programs in greater detail.

\subsection*{A. Welfare Reform}

In 1996, Congress adopted the Temporary Assistance for Needy Families (TANF) as part of the Personal Responsibility and Work Opportunity Reconciliation Act.\textsuperscript{26} Also called welfare reform, TANF replaced a program created during the New Deal, Aid to Families with Dependent Children (AFDC).\textsuperscript{27} States are permitted to spend TANF funds and a required amount of state funds (maintenance of effort) on a wide variety of programs and benefits, including cash assistance.\textsuperscript{28}

\begin{itemize}
\item \textsuperscript{23} See Boushey \& Wenger, \textit{supra} note 16, at 14; Vroman, \textit{Effects of Welfare Reform}, \textit{supra} note 20. Using hours worked as the eligibility factor opens the door to making unemployment insurance more available to people who are working year-round part-time at minimum wage, a practice of many parents fulfilling substantial caregiving responsibilities. Boushey \& Wenger, \textit{supra} note 16, at 14.
\item \textsuperscript{24} See Boushey \& Wenger, \textit{supra} note 16, at 14; Vroman, \textit{Effects of Welfare Reform}, \textit{supra} note 20; Vroman, \textit{Issue Brief}, \textit{supra} note 12.
\item \textsuperscript{25} Vroman, \textit{Effects of Welfare Reform}, \textit{supra} note 20.
\end{itemize}
Welfare reform may be one of the reasons that more women are in the labor force. Welfare reform also makes the issue of unemployment insurance reform urgent because welfare reform has made welfare benefits largely unavailable for low-income workers who lose their jobs, and former welfare recipients experience substantial instability in employment.

The labor force participation of mothers took a leap in the middle of the 1990s. While women's labor force participation declined somewhat with the recession, the rate is still higher now than in 1990. A similar pattern existed in low-income families headed by single mothers. In 1992, 64% of currently married mothers and 44% of never-married mothers were in the labor force; in 2000, between 57 and 68% of both groups were in the labor force. Between 1992 and 2000, the labor force participation rate of single mothers whose young-


30. See Jeff Chapman & Jared Bernstein, Econ. Policy Inst., Falling Through the Safety Net: Low Income Single Mothers in the Jobless Recovery (2003) (arguing that although the average unemployment compensation for low-income single mothers grew an average of $66 between 2000 and 2001, it is not enough to offset the losses from other income supports and safety net programs); Um'ran & Lovell, supra note 8; see also Boushey & Wenger, supra note 16.

31. See Bachu & O'Connell, supra note 4 (noting that 52.8% of women ages fifteen to forty-four with children under age one were employed in 1990, 53.1% in 1994, 68.7% in 1998, and 55.2% in 2000).


33. Calculating the employment rate of low-income single mothers varies depending on how the researcher defines the minimum number of hours of work the person must engage in before being considered a worker and how much money the person must earn. According to one researcher, between 1995 and 2000, the percentage of these mothers who were working at least 20 hours a week rose from 24% to 38%. The percentage dropped to 33% in 2001. Richard Wertheimer, Child Trends, Poor Families in 2001: Parents Working Less and Children Continuing to Lag Behind (2003), available at http://12.109.133.224/Files/PoorFamiliesRB.pdf. Using different definitions, another researcher found that the share of low-income single mothers who were employed rose from 59.1% in 1995 to 68.5% in 2000. Chapman & Bernstein, supra note 30.

est child was under seven increased from 46% to 70%. 35

Some people attribute the change to welfare reform, while others attribute it to the booming economy, 36 as well as changes in tax expenditure policies. 37 It will probably never be possible to tease out all the strands to determine whether welfare reform has played a substantial role. It seems fair to conclude that welfare reform has played some role, however. 38 Perhaps equally important is the work-first message of welfare reform, 39 which may contribute to worker discipline by convincing people in poverty that cash subsidies are unavailable to newly out-of-work mothers.

Prior to welfare reform, low-income mothers, who cycled in and out of employment to meet family responsibilities, were able to use welfare when they were out of work. 40 After welfare reform, using welfare as the equivalent of unemployment insurance has become much more difficult. For example, half as many children of employed single mothers received welfare in 2001 as compared with 1996. 41

Welfare reform has come to mean moving people from welfare to work. To accomplish this, state programs emphasize that work comes first. Welfare reform has had this effect because of a combination of changes in statutes, state policies, and welfare office practices. The statutory changes are the work requirement, sanctions, time limits, and the elimination

35. Id. at 11.

36. Compare id. at 21-24 (welfare reform accounts for more than half of increased labor force participation by low-income single mothers), with CHAPMAN & BERNSTEIN, supra note 30, at 2.

37. See CHAPMAN & BERNSTEIN, supra note 30; see also Hearing on the Employment Situation Before the Joint Economic Comm. on Improving Assistance for the Unemployed, 108th Cong. (2003) (testimony of Harry J. Holzer, Professor of Public Policy, Georgetown University).

38. See, e.g., Rebecca M. Blank, Evaluating Welfare Reform in the United States, 15 J. ECON. LIT. 1105, 1140 (2002); O'Neill & Hill, supra note 29, at 10, 21 ("[R]egression results indicate that TANF . . . accounts for more than half of the decline in welfare participation and more than 60% of the rise in employment among single mothers.").


40. See U'MRANI & LOVELL, supra note 8, at 1; see also BOUSHEY & WENGER, supra note 16; Harry J. Holzer, Remarks at the Urban Inst., Unemployment Insurance: Its Role and Adequacy as Layoffs Increase (Oct. 12, 2001), available at http://www.urban.org/content/NewsandEvents/Events/Events.htm.

41. WERTHEIMER, supra note 33 (25% in 1996 compared with 12% in 2001; food stamp utilization declined from 77% to 60% in the same period); CHAPMAN & BERNSTEIN, supra note 30 (unemployment rates among low-income single mothers rose to 12.3% in 2002, but TANF caseloads did not rise).
of an entitlement to cash assistance under TANF. States are required to have a certain percentage of the adults in the caseload participating in specified work activities, and states can use federal funds to provide cash assistance benefits to the adults in most of the cases for no more than five years. They are required to sanction people who fail to comply by reducing or eliminating their cash assistance.

The statutory requirements have led many states to emphasize and enhance benefits tied to work, such as disregarding a larger percentage of earned income, providing access to childcare subsidies, offering assistance with transportation to new workers, and forming partnerships with local employers and workforce development projects. For example, a quarter of families receiving TANF-funded cash assistance in 1999 also had earnings; that was true of only 8.4% of families receiving AFDC in 1979.

The incentive structures of the work requirement have also led most states to try to discourage people from applying for benefits. The elimination of the entitlement of families in poverty to cash assistance has freed states to deny benefits to families in poverty and to impose a variety of pre-application requirements, such as a job search. In addition, many welfare offices have undergone a "culture change," under which caseworkers stress to applicants and recipients the importance of earning money rather than accepting cash as-

42. See Blank, supra note 38, at 1106; KATZ, supra note 18, at 326-28.
44. Id. § 608(a)(7). Approximately half the states adopted a simple sixty-month time limit; the other half adopted shorter time limits or more complex schemes, such as intermittent eligibility periods. See Robert A. Moffitt, The Temporary Assistance for Needy Families Program, in MEANS-TESTED TRANSFER PROGRAMS IN THE UNITED STATES 302-03 (Robert A. Moffitt ed., 2003).
45. 42 U.S.C. § 607(e).
46. See KATZ, supra note 18, at 330-31; Blank, supra note 38.
47. Moffitt, supra note 44, at 312; WERTHEIMER, supra note 33 (among single-parent families working less than 20 hours a week, welfare receipt declined from 64% in 1996 to 31% in 2001; in single-parents working more than 20 hours a week, welfare receipt declined from 25% in 1996 to 12% in 2001).
49. See Moffitt, supra note 44, at 303-05.
sistance. 50

The primacy of work is not limited to the cash assistance aspect of welfare reform. Where a family’s adult member successfully leaves welfare for work, the family is entitled to an automatic extension of its Medicaid benefit for a period of time, regardless of financial eligibility. 51 The family is also entitled to an automatic extension of its food stamp benefit, unless the state has failed to adopt the transitional benefit option. 52 If the family is living in public housing, it is insulated for a period of time from the rent increase that would otherwise accompany an increase in income. 53 Conversely, where a family’s adult member is sanctioned for failure to comply with the work requirement, the family faces much more than the loss of cash assistance. The simplified food stamp transitional benefit is unavailable. 54 The family can access Medicaid coverage only through demonstrating financial eligibility. 55 The shift of public benefits toward people in the labor force is consistent with the increase in the number of families in deep poverty since the mid-1990s. 56 In short, the economic penalty for not earning income in the world of welfare reform is high.

B. Earned Income Tax Credit

Of the three largest income support programs funded by the federal government, the Earned Income Tax Credit is the largest in terms of the number of families receiving the benefit. 57 Just as important, EITC reaches a larger percentage of

54. 7 U.S.C. § 2020(s)(5); see also Wertheimer, supra note 33 (noting that, among families in which a single adult works twenty hours a week or less, the rate of food stamp utilization declined from 77% in 1996 to 60% in 2001; among families in which a single adult works more than twenty hours a week, food stamp utilization declined only 5% in same period).
56. KATZ, supra note 18, at 334-40; Blank, supra note 38, at 1118.
57. In 1999, 86% of eligible families claimed EITC, compared to reciprocity
eligible families than either cash assistance under TANF or food stamps, although recipiency rates among single women with children are probably lower than the rates for other eligible groups. During 2000, EITC tax expenditures were $31,471,000. Nearly 20 million taxpayers claimed the credit.

The EITC is available to some childless workers, but most beneficiaries are households with children. In 2001, taxpayers with two or more children could receive as much as $4,008. That amount was paid to taxpayers earning between $10,020 and $13,090 per year. Below and above that level of earnings, the credit is less; the credit ends when the taxpayer earns more than $32,121. The credit is fully refundable, regardless of whether the taxpayer owes income tax.

The EITC acts as a wage supplement for low-income workers. Approximately two-thirds of EITC payments are received by workers making less than $6.50 an hour, and more than ninety-five percent go to workers whose wages are below the median of $9.42 an hour. In the late 1990s, EITC payments brought approximately 4.3 million people above the poverty line.

Economists agree that the EITC has had a strong impact on bringing women in single-parent households into the labor force; one study concluded that as much as 62% of the increase in single mothers’ labor force participation was attrib-

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rates of 67% for food stamps and 52% for TANF. LEONARD E. BURMAN & DEBORAH I. KOBES, TAX POLICY CTR, EITC REACHES MORE ELIGIBLE FAMILIES THAN TANF, FOOD STAMPS (2003).
58. Id.
60. Id. at 155.
61. Id.
62. See generally id.
63. Id. at 148.
64. Id.
65. Hotz & Scholz, supra note 59, at 147.
66. Id. at 155.
67. Id. at 158.
68. Id. at 159; see also Blank, supra note 38, at 1108 (noting that household income for a woman with two children earning minimum wage rose 34.3% between 1989 and 2000, from $10,568 to $14,188 because of combined impact of minimum wage and EITC increases).
utable to the EITC.\textsuperscript{69} Teasing out its separate impact from welfare reform and employment expansions of the late 1990s still appears to baffle analysts, however.\textsuperscript{70}

III. A STORY

Angela, age 28, has two children, Joel, age 3, and Laura, age 6. Their father Tom, Angela’s partner for four years, left them shortly after Joel was born. Angela and the children live on the edge of a deeply impoverished section of a major city. She received cash assistance under TANF for three years. During that time, Tom began paying child support in the amount of approximately $150 a month. His payments fluctuate somewhat because his construction employment is intermittent. To fulfill the TANF work activity requirement, Angela participated in an employment preparation and search program, which taught people how to fill out applications, do interviews, show up at a job on time, etc. Through the program, Angela was offered a job as a janitor at a nursing home. Work begins at 6 a.m. and ends at 2:30 p.m. When offered the job, Angela asked to begin work at 8 a.m. so that she could get the children to school and childcare before leaving for work. She was told that was impossible. She knew she would lose her cash assistance if she refused the job offer, so she accepted the job.

On workdays, Angela gets up each morning at 4:15. She gets herself ready for work, then puts out breakfast for Laura, and packs lunches for the three of them. She takes Joel, still asleep, to a neighbor whose child goes to the same childcare provider. She charges Angela $10 a week to help out with Joel in the mornings. Angela gets on the bus by 5:15 for the thirty-five minute ride to work. Laura’s alarm clock rings at 6:30. Angela calls her from a payphone at 7:00 to make sure she is up, dressed, and eating breakfast. The office phone cannot be used for personal calls. Angela wears a pager that Laura uses to let her know that she has left for school. After school, the pager rings again to let Angela know that Laura is home and has locked herself into the apart-

\textsuperscript{69} Hotz & Scholz, supra note 59, at 183; see Besharov, supra note 2, at 9 (EITC is credited with causing 20 to 30\% of the decline in welfare rolls in the late 1990s.).

\textsuperscript{70} Hotz & Scholz, supra note 59, at 184.
ment. Angela arrives at Joel's childcare provider between 3:30 and 4:00, depending on whether she catches the first bus after work. She and Joel arrive home around 4:30. By then, Laura has had a snack and watched some TV. They make dinner together, do some chores, and go to bed.

Angela's job pays $6.00 an hour, or approximately $240 a week or $12,480 a year, which is within the range of the average earnings of women leaving welfare for work.\footnote{See Basharov, supra note 2, at 11.} Like most low-paid jobs, it provides no paid leave or health insurance subsidy. If she misses work, she does not get paid and she may be fired. So long as she does not miss too much work and her annual earnings do not fall below $10,020, she is eligible for the maximum EITC credit of $4,008.\footnote{See 26 U.S.C. § 32 (2000).} That is the equivalent of an additional $77 a week in her paycheck, if her employer is willing to pay her that way. Otherwise, she will receive the EITC credit as a lump sum when she files a federal income tax form. She and her children will continue to be covered by Medicaid for a year after leaving welfare.\footnote{Blank, supra note 38, at 1108.} After that, again depending on the state, the children may be covered by the Children's Health Insurance Program,\footnote{See id.} for which Angela may have to pay a premium. Some states provide full or partial subsidies for childcare for a period of time after parents leave welfare, and some also provide a transportation subsidy for a period of time. Many have elected to provide a transitional food stamp benefit, under which the family continues to receive as much in food stamps after leaving welfare as it did before the parent began working.\footnote{See 7 U.S.C. § 2020(a) (2004).} After the five-month transitional benefit ends, the family may continue to qualify for a smaller amount of food stamps if the parent is still employed. Some housing subsidy programs keep the family's rent stable for a year after the parent becomes employed rather than immediately adjusting it to reflect the increased income.\footnote{See 42 U.S.C. § 1437a(a)(2)(D) (2000); 24 C.F.R. § 960.255 (2003).} The family's economic well-being is further enhanced because Tom's child support payments will now be sent to Angela rather than retained by the state as reimbursement for cash assistance.
So long as Angela remains employed, the family’s economic situation is better by a substantial degree compared to its situation on welfare. If her employment ends, however, the situation gets substantially worse. As explained earlier, if she loses her job for family-related reasons, she is highly unlikely to qualify for the temporary partial wage replacement provided by unemployment insurance. So long as she is not on welfare, the family will continue to receive Tom’s child support. Depending on how much she earns in the calendar year before losing employment, her EITC could decline substantially. Their continued eligibility for food stamps and medical assistance will be means-tested. Angela may lose the transportation and child care subsidies quickly, even if she could use them during her job search. Finally, Angela is unlikely to turn to welfare for help, at least right away. She may have used up her time, or she may want to bank whatever months of eligibility that remain for an emergency. Alternatively, she may have become persuaded that applying would be useless. She may be right: depending on how she loses work, she may not qualify for welfare for a period of time or until she can prove that she has done an adequate job search.

A major reason Angela may become unemployed is her responsibility for two children. Angela will have to miss work if Joel gets sick, since neither the neighbor nor the childcare provider will take a sick child. If the nursing home demands that Angela stay for a second shift because another employee is sick, Angela cannot comply. To do so would mean leaving Laura alone for many hours after school and hoping that the childcare provider can find someone to care for Joel until midnight. If Laura encounters problems at school or if either child needs to see a doctor for a checkup, Angela will have to miss work. Once Angela misses too much work or refuses overtime too often, she loses not only pay, but also her job.

Angela would not lose her job if her employer would be willing to allow her to work thirty hours a week rather than forty, which would reduce her dependence on multiple childcare providers. Angela would not lose her job if her employer provided paid sick and annual leave. Angela would not lose

77. Once the transitional benefits end, the family’s economic situation declines as well, which is a topic for a different paper.
her job if her employer did not require mandatory overtime. Angela would not lose her job if her employer paid her a living wage so she could put Joel in a childcare center that has a sick room, pay for an after-school program for Laura, and perhaps buy a used car to reduce her commuting time to fifteen minutes.

But employers are not required to do any of those things. And Angela’s power to make her employer do things that would help employees like her is constrained by the public benefits and tax expenditure systems on which she relies. For example, if she refuses to stay at work to do mandatory overtime because of childcare problems, her employer may be entitled to fire her for cause, again eliminating unemployment insurance coverage. If she is laid off from her job, she would be eligible for unemployment insurance unless she concludes that she cannot sustain full-time employment while caring for two young children. If she tells the unemployment insurance office that she is seeking part-time work, she will be found ineligible for UI in many states. If she quits work because she thinks Laura is in danger when she walks home from school and stays home alone, she may be right about her child’s welfare, but many states will find her ineligible for welfare and food stamps. 78 If Angela decides, as many economic analysts have suggested, that unionization would help people like her get better pay and benefits, she may be tempted to attend an organizing meeting and risk getting fired in retaliation. 79 Further, her workmates may be unenthusiastic about unionizing to obtain better wages because the EITC, Children’s Health Insurance, food stamps, and other public benefits raise their actual standard of living beyond what their paycheck provides. 80

IV. WHAT NEXT?

The public benefits and tax expenditure systems, coupled

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78. See Nina Bernstein, Daily Choice Turned Deadly: Children Left on Their Own, N.Y. TIMES, Oct. 10, 2003, § 1 (Metropolitan), at 1.
79. See, e.g., Katz, supra note 18, at 181 (describing the “union premium” enjoyed by low-income union members).
with the low value of the minimum wage, have produced a system in which people like Angela must enter the job market and stay there, regardless of the costs to their family responsibilities. Employers hold the cards. That they have gained financial advantage from this system is shown by the fact that low-wage workers in many occupations have not only experienced high unemployment in the last several years, they have also seen their average earnings decline, while the incomes of those in higher quintiles have risen.\textsuperscript{81} In recent years, further, employers have cut back rather than increased family-friendly programs.\textsuperscript{82}

Unemployment compensation reform to expand eligibility for work/family issues is a modest response to this situation. It only provides temporary and partial wage replacement. But it is significant, both symbolically and materially.

At a symbolic level, eligibility for unemployment insurance confers the status of "worker" on people who are concurrently meeting responsibilities at home and at work. One's identity as a worker, both personally and socially, is an essential entry point into mainstream culture and political empowerment.\textsuperscript{83} Unemployment insurance, further, is perceived as a legitimate entitlement, that is, a source of income for responsible people. When mothers with young children can turn to the UI system rather than the welfare system for income replacement, they have the opportunity to avoid the stigma and demeaning processes of participating in public benefit programs.

At a material level, unemployment insurance may pro-

\textsuperscript{81} See Chart of the Week: Real Wages, WASH. POST, Jan. 25, 2004, at F3; Alejandra Marchevsky & Jeanne Theoharis, Welfare Reform, Globalization and the Racialization of Entitlement, 41 AM. STUD. 235, 236 (2000). But cf. LERMAN, supra note 32 (noting that between October 2001 and October 2002, wages of single mothers increased three percent after inflation and that wage growth was even higher among low-wage single mothers); HOWARD, supra note 80, at 150-52.

\textsuperscript{82} See Stephanie Armour, More Companies Downsize Family-Friendly Programs, USA TODAY, Oct. 20, 2003, at 1A.

vide the key to a family’s ability to maintain something close to its usual standard of living while the parent is seeking work. It may allow the family to avoid housing and food insecurity, with important consequences for the health and education opportunities of the children.  

The material consequences affect employers as well. Employers pay most of the cost of the unemployment insurance system. All employers pay into the system. Some employers pay more than others, however; their costs depend in large part on how many successful claims their former employees make. If UI eligibility changes to include parents who lose or reduce their labor force participation to meet family responsibilities, all employers will pay a higher UI tax. But those who feel the pinch the least will be those who adopt more family-friendly employment policies. Those who, like Angela’s employer, refuse to make changes that parents need will have more successful claims made against them by former employees, and their costs will rise. In an employment system that offers few incentives for employers to modify their practices, unemployment insurance can open the door.

Unemployment insurance reform, then, is a small but


85. It should be noted that, in recent years, employers have been making record low contributions to the UI trust fund. See Emsellem, *supra* note 15, at 10 (observing that the national average tax on total wages in 1994 was almost double that of 2002).

Another point is important. As economists have demonstrated, the costs of unemployment insurance fall on employees as well as employers, because employers, over time, pass through the costs of benefits to employees in the form of reduced compensation. The employees who will be affected by this pass-through include all employees, however, not only those struggling at that moment to be responsible concurrently at home and at work. Discussion of whether it is fair to impose this cost on employees generally, rather than only on employees who are parents with children at home is beyond the scope of this article.

86. For employers to have an incentive to modify their practices, employers will have to be “charged” when the occasion for unemployment is a conflict between work and family responsibilities. Under current law, these benefits are usually treated as “noncharged,” meaning that all employers share the cost as part of their basic unemployment insurance taxes, regardless of whether they have adopted family friendly policies. See, e.g., Ala. Code § 25-4-78 (2004); Conn. Gen. Stat. Ann. § 31-225a (West 2003); Me. Rev. Stat. Ann. tit. 26, § 1195 (West 2003); N.C. Gen. Stat. § 96-9 (2003); Rebecca Smith, Richard W. McHugh & Robin R. Runge, *Unemployment Insurance and Domestic Violence: Learning from Our Experiences*, LAPTOP Regional Conference, at www.nelp.org/docUploads/pub92%2Epdf (last modified May 2002).
significant part of an effort to make life better for low-wage workers, especially those who try to be responsible concurrently at home and at work. And it is an effort that has some potential for success. Reform campaigns are underway in half the states. 87 Numerous states have improved eligibility standards in recent years in ways that help parents who have concurrent responsibilities at home and at work. 88 UI reform is a missing piece of welfare reform, and it is time for advocates for low-wage workers, for union organizing campaigns, and for women's rights to join together in achieving it.

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88. See id.; UM'RANI & LOVELL, supra note 8, at 3-4 (describing UI reforms and reform coalitions in Wisconsin and Massachusetts).