

PUBLIC POLICY TOWARDS THE WORKPLACE

Government policies that influence or prescribe the conditions provided in the workplace are not new. Examples can be found going back to the turn of the century and even earlier. There are basically five types of government intervention: social insurance programs financed by payroll taxes or premiums, minimum standards programs, contingent standards, tax-based subsidies, and exhortation. The first two are mandates and the last two are incentives. Contingent standards fall between these two approaches.

Social Insurance

In social insurance programs, employers are legally required to participate in publicly-run benefit plans. Social Security is the most prominent form of American social insurance. The original program—created in the 1930s—was largely a pension and survivors plan. Subsequently, the Social Security program was enlarged to include disability insurance and Medicare for the elderly. Over nine out of ten wage and salary workers are covered by Social Security, with the chief exceptions being certain government employees.² Employers and employees pay a combined payroll tax rate of over 15 percent at present on the covered wage base (up to \$51,300 in 1990).

Apart from the requirement of payroll taxes, Social Security interacts with—and influences—privately-provided pensions, disability insurance, and health insurance plans. For example, some private pensions are formally “integrated” with Social Security; that is, their benefit formulas take explicit account of retiree Social Security payments.³ But even where formal integration is not used in planning retirement programs, employers usually consider the likely Social Security benefits that will be received by their workers.

Unemployment Insurance (UI) is the second major federal social insurance program. Virtually all wage and salary workers are covered by UI. Also created in the 1930s, UI provides benefits to laid-off workers, typically for up to twenty-six weeks, through a complex federal-state system. As in the case of Social Security, employers are required to pay payroll taxes to support UI. Moreover, UI benefits and tax arrangements can influence employer policies with regard to economic layoffs, discharges for cause, and wage flexibility.⁴ And some unionized employers have supplemental unemployment benefit plans which are integrated with basic UI.

The workers' compensation system is the oldest form of social

Reprinted from *REGULATING FOR THE FUTURE: The Creative Balance*, Carol Tucker Foreman (ed.), Center for National Policy Press, 1991.

MANDATED BENEFITS, VOLUNTARY BENEFITS, AND THE CHANGING WORKPLACE

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THERE IS INCREASING interest in mandated employee benefits—that is, benefit plans or working conditions which the law requires employers to provide to their workforces. In part, this interest can be attributed to legislation which has been under consideration by Congress in recent years.¹

While currently proposed legislation is an obvious element contributing to interest in benefit mandates, though, there is a larger question of why such bills are under active consideration at this time. In essence, the answer is that the United States has not developed a consensus, or even developed mechanisms for achieving consensus, in five key areas:

- the role of social insurance vs. private benefits
- the nature of the employee-representation in the workplace
- the scope for employee-representation in the workplace
- the emphasis to be placed on achieving full employment, and
- the appropriate mechanism for dealing with the federal budget deficit

All but the budget issue can be encompassed under the general question: What do Americans expect from the employment relationship in the 1990s? The issue of mandates is really a component of the more general questions of public intervention (through various mechanisms) in the workplace. Absent a general consensus in these areas, perceived social and economic needs will tend to bring forth proposals to meet those needs on a piecemeal basis. This chapter focuses on the forces that are bringing forth proposals for mandates and other forms of government intervention in the labor market, forces that go beyond the specific issues—such as health care coverage—that the proposals address.

insurance in the United States—the first plans go back to the early part of this century—but it is mainly a state-level matter. Workers' compensation provides benefits to employees who are injured on the job or suffer from occupational diseases. Typically, employers are required to carry workers' compensation insurance through a private carrier or to self-insure, but in some cases state insurance funds are involved. State agencies play a major administrative role, despite the prevalence of private carriers. Premiums are experience-rated and thus influence employer policies with regards to safety and health. About eight out of ten wage and salary workers are covered by workers' compensation.⁵

Minimum Standards Programs

Minimum standards programs impose on employers certain minimum requirements relating to employment conditions. Employers can provide better conditions than those mandated, but they must at least offer the specified minimums. One of the oldest federal programs of this type is the Fair Labor Standards Act, originally passed in 1938, which has three principal components: payment of an hourly minimum wage (recently raised from \$3.35 to \$3.80 in 1990 and \$4.25 in 1991), overtime payments of time and a half for most non-supervisory employees, and limits on the use of child labor.

Over 85 percent of the non-supervisory workforce is subject to the federal minimum wage floor (although, of course, most employees earn substantially more).⁶ Many states have similar programs, some of which provide higher-than-federal minimum standards. While most employers offer terms above those required on wages, the overtime provisions appear actively to set employer policy in many cases. That is, without the forty-hour overtime threshold, regular workweeks might be longer and hours above forty might be less well paid.⁷

Federal requirements for Equal Employment Opportunity (EEO) are another example of minimum standards, in this case standards of nondiscrimination on the basis of race, sex, religion, age, and national origin. The major federal EEO programs go back to the mid-1960s. State laws are also involved. In many respects EEO requirements have had the most far-reaching effects of any minimum standards program, since they influence virtually all aspects of employer human resource policy: recruiting, testing, hiring, training, evaluation, compensation, layoffs, and termination. The courts have played an important role in fine-tuning EEO standards.

In 1970, interest in safety and health on the job led to the establish-

ment of federal minimum standards under the Occupational Safety and Health Act (OSHA). OSHA provides for standard setting, enforcement, and research. Prior to 1970, most such minimum standard setting in the safety and health area was done at the state level. Under OSHA, some states elect to continue to enforce standards at or above the federally-mandated level.

While the 1980s is not generally thought of as a period in which government regulation was extended, there were exceptions, notably in the area of plant closings and layoffs. Surveys indicated that many employers gave little or no notice prior to plant shutdowns or mass layoffs.⁸ In 1988, Congress enacted a 60-day minimum standard for notice in the event of such terminations under the Worker Adjustment and Retraining Notification Act (WARN).

Finally, during the 1970s and 1980s, there began to evolve standards for individual terminations, mainly through the mechanism of state court decisions rather than legislation. Traditionally, American workers were subject to the "at-will" doctrine, under which they could be terminated for any reason—good or bad, or for no reason at all—unless there was an explicit contractual agreement protecting their job security. While unionized employees do have contracts, almost always providing for grievance and arbitration remedies in cases of discharges, nonunion employees rarely have explicit contracts with their employers. However, courts in many states increasingly have found exceptions to the at-will doctrine and a considerable volume of wrongful discharge litigation has resulted.⁹ In effect, the judicial system has moved towards a minimum standard for termination, resembling the "just cause" criterion, used by arbitrators under collective bargaining agreements. One state, Montana, has now adopted a law mandating such a standard for discharges and other states may follow its example.

Contingent Standards

A number of laws and regulations require that, if an employer voluntarily elects to offer certain benefits, then certain minimum standards must be met. For example, at present employers are under no federal obligation to offer health insurance. But, if they choose to do so, they are subject to the requirement that they must offer the option of a Health Maintenance Organization (HMO) pursuant to the HMO Act of 1973 (as amended in 1988), if an HMO is available in the local area. HMOs provide health services for a monthly fee rather than on a fee-for-service basis. By encouraging the development of

HMOs, Congress hoped to provide added competition and employee choice to the health marketplace and thus to contain health care costs. The HMO Act experience shows that federal contingent standards can have a powerful impact. Stimulated by the Act, enrollments in HMOs rose from six million in the mid-1970s to over twenty-eight million in the late 1980s.¹⁰ State laws may also establish contingent standards. For example, many states require that health insurance—*if offered*—include coverage for conditions such as mental illness or alcoholism.¹¹

Employers are not required to offer pension programs to their employees; but if they do, the plans must meet the standards laid out in the Employee Retirement Income Security Act (ERISA) of 1974. ERISA deals with such issues as funding, investment policies, eligibility, and vesting rules. Employers can offer a defined-contribution plan (a fixed contribution into a fund which is invested and accumulates for the employee) or a defined-benefit plan (a promised monthly retirement benefit based on a formula typically geared to seniority, age, and pay level). If employers choose to offer the latter, they must carry termination insurance with the government-run Pension Benefit Guaranty Corporation. About four out of ten wage earners were under some kind of job-related pension plan as of the mid-1980s and most of these plans were subject to ERISA.¹²

The late 1970s saw the adoption of a contingent standard regarding the treatment of pregnancy under employer disability and other group benefit insurance plans. A Supreme Court decision had permitted employers to exempt pregnancy from disability coverage without violating EEO requirements.¹³ In 1978, Congress overturned that decision with the Pregnancy Discrimination Act. Under this law, if an employer elects to have a disability plan—and there is no requirement that such a plan be offered—the plan must cover pregnancy as it would any other medical disability. There is no comprehensive survey of short-term disability coverage, but for full-time employees in medium and large firms, about 46 percent of employees had such insurance for sickness and accidents in 1988.¹⁴ The Act also covers other benefits based on medical condition.

During the 1980s, concern about cancellation of group health insurance for laid-off employees led Congress to adopt a continuation-of-benefit standard for employers that elect to provide health insurance to active employees. Laid-off workers must be given the option of continuing their insurance at their own expense, but at the group rate, under requirements included in the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA). Prior to COBRA, laid-off employees would more typically only have the option of

continuing coverage under the more expensive individual rate, if the insurance carrier chose to offer individual coverage at all.

Finally, as will be discussed below, many benefit plans are offered tax inducements under the Internal Revenue Code. Employers do not have to offer plans which meet the Code's requirements. But if they choose to offer plans, and want the benefits to be eligible for the relevant tax incentives, employers must design plans to comply with a variety of nondiscrimination tests. These tests discourage benefit discrimination against lower-paid employees. The most stringent nondiscrimination requirements were included in Section 89 of the Internal Revenue Code under amendments adopted in 1986. Because of complaints from the employer community over administrative complications, Section 89 was repealed in 1989. However, previous nondiscrimination requirements continue and Congress still has an interest in expanding employer-provided benefits to lower-paid workers.

Tax-Based Subsidies

The tax code offers a way for Congress to subsidize the offering of certain kinds of benefit plans without getting into direct fundraising. Tax incentives offer inducements to the offering of the plans, but do not require that they be offered. Three types of inducements can be cited: tax credits, tax avoidance, and tax deferral.

Tax credits are potentially the most costly type of incentive to the government since the expense of offering the benefit is deducted from the employer's income tax liability. The most recent prominent example of the use of tax credits came in the 1980s in connection with Payroll-based Stock Ownership Plans (PAYSOPs). As part of the general desire to foster employee stock ownership, Congress permitted the cost of employer contributions of stock of up to one-half percent of payroll to PAYSOPs, to be deducted from employer tax liabilities. In effect, this represented a dollar-for-dollar federal reimbursement of the cost.

By 1986, 28 percent of full-time employees in private medium and large firms were covered by PAYSOPs.¹⁵ Subsequently, budget deficit pressures led to the abolition of these credits and PAYSOPs no longer exist. But their growth during the period in which the credit was allowed illustrated the power of the tax credit mechanism to influence employer compensation policies. Apart from their use in fostering benefit plans, tax credits have also been utilized to induce the hiring and training of disadvantaged youth in an effort to reduce joblessness.¹⁶

A more common form of tax incentive is the avoidance of a tax liability by the employee for the value of the plan offered. For example, if an employer offers health insurance, the value of the benefits received by employees is not subject to personal income taxation, unlike cash wages. Over half of all wage earners receive some form of health insurance at least partially paid by their employers.¹⁷ Similarly, the value of life insurance coverage (up to certain limits) is not taxable to the employee (nor is the receipt of the resulting death benefits taxable to his/her heirs). Firms can offer employees options of paying for child care (up to specified limits) in pre-tax dollars through special reimbursement accounts, although apparently relatively few employers have chosen to do so.¹⁸

A lesser form of tax incentives is the deferral. The benefit is not immediately taxable to the employee, but becomes taxable at a later date, typically upon receipt at retirement. Pension, deferred profit sharing, and 401k (salary reduction) plans fall under this form of tax incentive.

Exhortation

From time to time, the federal government has encouraged employers to follow certain policies without providing economic incentives or using mandates. During the early New Deal, for example, employers were exhorted to follow the codes (dealing with wages, hours, and other matters) of the National Industrial Recovery Act, although the only reward was the right to display the "Blue Eagle" of the program. Firms may respond to such exhortation in order to maintain good public relations.

Sometimes, exhortation policies have been aimed negatively, that is, they have urged employers not to do something. In the 1960s, for example, the Kennedy and Johnson administrations—for anti-inflation reasons—urged employers and unions not to increase wages in excess of a voluntary guideline of 3.2 percent; a similar program developed in the late 1970s under the Carter administration.¹⁹ Both programs indirectly encouraged productivity-enhancing labor agreements since these permitted exceptions to the basic wage standard. During the 1980s, the U.S. Department of Labor began to encourage the spread of cooperative and participative labor-management relations programs directly, primarily by publicizing success stories and offering information on cooperative arrangements. Related efforts are being made by the Federal Mediation and Conciliation Service.²⁰

Perhaps the most dramatic example of exhortation in recent years

has come in connection with the "war on drugs." Employers are generally not under an obligation to test employees or job applicants for drugs. But many were apparently induced to start drug testing programs as the result of federal interest in the drug problem during the 1980s. Drug testing itself would generally not be thought of as an employee "benefit." However, employers have also been urged to marry drug testing efforts with creation of Employee Assistance Programs (EAPs). EAPs typically include referral to drug and alcohol counseling and detoxification programs, along with other services to employees. Thus, exhortation for employers to join the war on drugs may have led to the creation or enhancement of EAPs, an indirect benefit for employees.²¹

THE GENERAL ISSUE OF INTERVENTION IN THE WORKPLACE

The survey above amply demonstrates that government intervention in the workplace, by mandate or otherwise, is by no means a new idea. It has been a basic feature of public policy since the 1930s and has steadily grown in importance. Of course, the existence of such intervention is not necessarily a justification for it. Indeed, in classical economic modeling, such intervention is typically seen as a "Bad Thing."

The Classical Economic Approach

In the classical economic model employers and employees freely contract with each other and arrive at efficient "solutions," or, mathematically optimal exchanges of labor for compensation. If such "solutions" include certain benefits or working conditions, these outcomes are depicted, as by definition, mutually advantageous and therefore socially desirable. But if benefits or working conditions are mandated, subsidized, or otherwise artificially induced, the outcomes—with few exceptions—have traditionally been viewed as inefficient distortions. Both workers and employers in theory are rendered worse off, making it difficult to understand—in the context of the classical approach—why the idea might appeal to employees.²² Thus, McKenzie argues:

"... Mandated benefits can cause the value of the payment bundles as judged by employees (not by Congress) to fall. If that were not the case, the payment bundles would be voluntarily readjusted (in the absence of legislation) by employers to favor the preferences of their workers."²³

Within the classical approach, exceptions to the anti-intervention bias are hard to find. They would need justification as remedies for some kind of market failure. Perhaps the 40-hour standard for weekly working hours contained in the Fair Labor Standards Act's overtime provisions might fall into this category. Because firms need to interact with other firms, it is difficult for any one firm to deviate from norms of working hours of other firms. Employee preferences regarding hours may be imperfectly reflected in labor market contracting due to coordination problems; a role for the government to act as an hours coordinator might therefore be justified.²⁴ The limited scope of this example, however, illustrates the difficulty of fitting any intervention into the classical economic approach.

One possibility, however, for rationalizing mandates—even within the classical framework—is the possibility that mandates themselves (or some related policy) might lower the costs of acquiring benefits below the level at which employers could voluntarily provide them. For example, as will be discussed below, there are reasons why health benefits could be more expensive for small employers to provide than for large employers under the current voluntary system. Suppose the price of benefits were lowered via a mandated system to a level at which employees would voluntarily want to trade wages for benefits. In such cases, employees and employers would be better off with the mandate than without it.

Shifting Norms as Justifications for Intervention

Under the classical model, employee "tastes" are assumed to be independently determined. And employers are assumed to have full information on what the costs and benefits would be of alternative workplace arrangements and policies. But despite the simple model, the historical record suggests that norms of the workplace on both sides of the employment relationship have been changed by government interventions and external pressures, often keyed to "accidents" such as wars and depressions.²⁵

In particular, World Wars I and II, the Great Depression, and the related rise of unionization played a major role in establishing workplace norms of the mid-to-late twentieth century. These events and forces gave rise to modern personnel policies and general ideas of fair treatment in the workplace. Once such norms have been established, even the simple classical model indicates that employers should optimally adjust their policies in response.

Consider, for example, the widespread provision of pension plans.

Pension arrangements have a long history, going back to the turn of the century and before. However, until the post-World War II period, very few workers had any sort of pension coverage. Government policies stimulated pension creation via tax incentives. But the initial impetus came from the union sector, which began to provide such benefits for ordinary employees on a large scale. The tax incentives that developed for pensions represented an interaction of the collective bargaining process and the political process, each reinforcing the other.

Interestingly enough, modern economic thinking, or the so-called "new economics of personnel," has provided a variety of rationales for the offering of pensions.²⁶ Pensions are viewed as a form of "efficiency wages," pay arrangements which induce desirable employee conduct. Specifically, by deferring a component of compensation, employees have an incentive under the efficiency wage model to perform satisfactorily and thus ensure their retention by the firm until they qualify for the deferred payment. Incentives for potentially costly voluntary turnover (quits) are also reduced by deferred pensions.

Now that pensions are common, non-economist human resource specialists might point to such motivational effects as increased loyalty to the firm. They might also point to potential union avoidance motives for nonunion employers to offer benefits such as pensions. With hindsight, all of these stories seem rational from the firm's viewpoint. But prior to World War II, none of these reasons seemed very effective in stimulating the provision of pensions. Thus, the pension example illustrates the more general point: Interventions may change norms and expectations. The new personnel practices which emerge due to an initial intervention may well become embedded in the system and reinforce themselves. Today's imposition may be tomorrow's norm of fairness.

Not all intervention attempts succeed in making major changes. Substantial tax incentives have been provided since the mid-1970s to the creation of Employee Stock Ownership Plans (ESOPs). Advocates have seen ESOPs as a way of promoting major social change.²⁷ Yet apart from the now-defunct PAYSOPs mentioned earlier, relatively few employees seem to be involved in ESOPs, according to the Bureau of Labor Statistics. Despite widespread publicity about the role ESOPs have played in some corporate takeover campaigns, only 2 percent of employees in medium-to-large sized firms were covered by ESOPs in 1988.²⁸

On the other hand, government intervention in the equal employment opportunity area does seem to have had an impact going beyond

simple numerical counts of minorities and women in particular types of jobs. Today, the notion of "managing diversity," of dealing with potential cultural clashes across race, sex, and national origin lines in the workplace, is the rage of the human resource profession. Obviously, projected changes in the demographics of the workforce in the 1990s play an important role in explaining the interest in diversity. But years of EEO pressure have also left their mark on the way managers now think about such issues.

Avoiding Social Charges

Interventions in the workplace may be justified in the context of other social policies. The creation of social insurance was in part a way of trying to avoid having individuals who were unable to work, because of old age, occupational injury, or general recession and depression, become public or charitable charges. The programs created formal administrative systems for dealing with such problems, rather than letting them be handled through *ad hoc* systems of economic relief. Apart from the direct costs of such relief, other social costs (such as crime) also may be avoided.

These types of justification are not confined solely to the social insurance programs created in the 1930s and before. They have also been used in contemporary contexts. For example, the main argument made in favor of mandated employer-provided health insurance is that it will spread protection to much of the uninsured population. The number of individuals who cannot otherwise afford health care, and might end up having medical bills met through Medicaid, charity, public hospitals, or just nonpayment of bills, would thus be reduced.

GOVERNMENT MANDATE VS. COLLECTIVE BARGAINING

Governments of many industrialized countries intervene in the labor market far more extensively than do federal or state governments in the United States. Benefits such as vacations may be specified by law in other nations. Various individual job security protections are commonly provided, including mechanisms for appeal of discharges. Layoffs may be discouraged. And social insurance arrangements can be more elaborate.

The United States might have moved in these directions in the 1930s, when the question of the degree of labor-market intervention

was opened. But instead Americans generally chose to specify the *process* by which decisions on such matters would be determined privately, rather than to specify *outcomes*. Outcomes in the U.S. system were to be specified only as minimums or floors, e.g., minimum wages, or basic social insurance. Otherwise, employees who had complaints about their working arrangements were to reach agreements about those issues with their employers through collective bargaining.

Under the Wagner Act of 1935, a procedure for workplace elections in the private sector was established so that workers could choose union representatives as their bargaining agents. These representatives could then make demands for changes in "wages, hours, and conditions." Subsequent court decisions interpreted the scope of bargaining widely to include the various retirement and insurance benefits which characterized the post-World War II period.

Employers were placed under no obligation to comply with particular demands, but were expected to bargain in "good faith" about them. The degree to which worker demands would be satisfied was to depend ultimately on the relative bargaining leverage of the employer and union sides, including the use of strikes. This model of decentralized representation, often without the right to strike though, was extended to many government employees, mainly in the 1960s and 1970, through various state, local, and federal laws.

Undoubtedly, the framers of the Wagner Act believed that collective bargaining would become the major means of dealing with workplace problems. At the time the Wagner Act was passed, workers were flocking into unions. Where representation elections were held, the vast majority resulted in selection of a union. Union membership rose rapidly over the next fifteen to twenty years, stimulated by the Wagner Act itself and government interest in industrial peace during World War II.

Union representation never extended to a majority of employees, even at its height. In the private nonfarm sector, however, close to 40 percent of all workers were unionized in the mid-1950s.²⁹ And because these workers were more highly paid and worked longer hours than nonunion employees, roughly half of the total private national compensation bill was subject to collective bargaining agreements in that period.³⁰

Apart from direct representation, union negotiations had an indirect effect on nonunion employers. The health and welfare programs adopted by unions were often imitated by nonunion employers. Elaborate systems of union avoidance were less in evidence in the 1950s than they are now, but an important means of staying nonunion

was by the offering of union-like compensation and conditions. Not all union practices automatically were followed in the nonunion sector. Supplemental unemployment benefits (which added to basic UI payments for laid-off workers) and escalator clauses (which adjusted wages through formulas linked to the Consumer Price Index) have remained largely confined to union workers. But there was enough limitation of union innovations for public policymakers to continue to rely on private negotiations to deal with workplace complaints, the policy begun in 1935.

In retrospect, however, the 1950s can be seen as the peak of union influence in terms of private-sector membership. Thereafter, union membership as a percent of total employment steadily slipped. In the 1980s, unions also lost membership in absolute terms, so that by the end of the decade, fewer than one in seven wage and salary workers were covered by collective bargaining in the private sector. While the situation in the public sector is quite different (over four out of ten government workers are union-represented), the precipitous drop in private unionization has effectively nullified the 1935 public policy presumption that workplace conditions would be determined largely through collective bargaining.

Although the causes of the decline in unionization are much debated, the notion that it simply reflects the changing industrial composition of the workforce (de-industrialization) is not correct. De-industrialization "explains" some of the trend, but most of the drop in unionization has occurred within industrial categories, not across them. There is substantial evidence that after the 1950s, nonunion employers took a more aggressive posture with regard to union avoidance.³¹ Tactics ranged from simply following progressive personnel policies, to siting new plants and ventures in nonunion regions, and hardball resistance to union organizing efforts.

During the early 1980s, these management approaches increased in prominence, as the regulatory system surrounding the amended Wagner Act became more conducive to their use. At the same time, the number of union representation elections fell sharply and has never recovered. The union "win rate" in such elections rose slightly after the 1982 recession trough. But the sharp drop in elections and the fact that they cover relatively small units and few workers, have made the prospects for future gains in union representation bleak. Projections now suggest private unionization rates as low as 5 percent by the end of the 1990s unless dramatic changes occur.³²

The conservative political climate of the 1980s certainly played a part in the decline in unionization. It also shifted the political balance against the use of public social insurance programs to deal with issues

such as health care. These two influences, somewhat paradoxically, have led to pressures to resolve workplace problems and social needs by legal and regulatory means.

If workplace complaints are not adjudicated through union representation, there is a natural tendency for employees to look for other remedial mechanisms. For individual workers, this has sometimes meant appeal to courts in wrongful discharge cases and the use of EEO and workers' compensation as parts of a *de facto* national grievance procedure. At the political level, it has meant greater legislative interest in workplace conditions; specifically, mandated benefit proposals and active use of the tax code to stimulate certain plans and discourage others. As a practical matter, the individual bargaining envisioned in the classical economic model is not producing results sufficiently satisfying to employees to deter their use of courts and legislation. If issues such as medical insurance are ruled out of the public sector for political reasons, then it is natural they become focused on the workplace.

Employers do not like these court and legislative interventions but the collective bargaining alternative has been steadily undermined as a forum for most workers. From the viewpoint of individual firms, of course, the impact of their particular policies of union avoidance on changing patterns of public policy is too small to consider. Forums in which long-term collective interests can be considered and debated are not readily found in the American political system. Indeed, the last time the issue of employee representation was considered was at a White House conference in 1945, when both union and management spokespersons were brought together to discuss the postwar industrial relations system.³³ While the conference did not produce a consensus, it did put the major issues on the table and with hindsight can be seen as an important step in the formulation of that system. The possibility of re-creating such a forum is discussed below, in the final section of this chapter.

FORCES CHANGING THE EMPLOYMENT RELATIONSHIP

A variety of influences have been creating pressure on traditional notions of the employer-employee relationship. Some of these result from long-run demographic changes. Others reflect changes in product markets. Both have important implications for the issue of mandated benefits, government intervention in the workplace, and the existing system of decentralized benefits and work practices.

Product Market Changes

In the 1950s, the American economy was "Galbraithian" in character, with big firms and big unions dominating the scene.³⁴ In the case of big firms, government established countervailing rules regarding competitive norms through antitrust policy. Intervention in major labor-management disputes was also commonplace.

Thanks to wartime economic damage in Europe and Japan, and to a tendency for the dollar to be undervalued under the then-existing system of fixed exchange rates, foreign competition was largely limited to primary products. High ratios of equity to debt were considered desirable by business—perhaps with the memory of the Great Depression still relatively fresh. Prevailing wisdom in the finance field generally concurred with this strategy of having an economic cushion of equity.

Large, stable firms seemed to be engines of innovation and growth, providing rising productivity and thus enabling regular improvements in living standards. In some industries—notably, transportation, communications, and finance—a substantial overlay of government regulation helped ensure this stability. Stability in the product market meant stability in the labor market. The most desirable jobs were in large firms that provided job stability and career ladders in exchange for employee loyalty. Writers of the day spoke of "maturity" in labor-management relations at such firms, a tacit understanding on both sides of how the game was to be played.³⁵

That the product-market conditions of the 1950s do not apply to the 1990s is a truism, although there is no one date at which the shift from one regime to the other was made. Large Fortune-500 firms grew faster than small firms through the 1960s, but seemed to reach a plateau in the stagflation of the 1970s. During the 1980s, their workforces shrank absolutely, even as total employment expanded. The spread of technology led to increased foreign competition for markets at home and abroad. A related development was the shift to flexible exchange rates in the early 1970s; volatile exchange rates could change the international competitive position of American firms, creating added uncertainty in the product markets.

Deregulation began in airlines in the 1970s and spread to other sectors. Financial theory questioned the sacrosanctness of a high equity-to-debt ratio.³⁶ Armed with new support for debt financing, investment bankers developed the junk bond market, setting the stage for the mergers, acquisitions, and takeovers of the 1980s. Reinforcing the new approach to borrowing was the financial approach to the firm itself which, unlike the organizational approach, depicted the firm as

a "portfolio" of detachable assets.³⁷ The ability to engage in corporate restructuring was enhanced as antitrust law was relaxed in the 1980s.

Computer technology seemed to push for flexibility in product markets where stability was once the rule.³⁸ The potential increased for carving out customized niches in markets, rather than serving all customers through large, mass-production runs. Competition in the field of product innovation intensified.

The Labor-Market Reaction

Dramatic changes in product-market conditions inevitably have labor-market consequences. Those that have occurred during the past two decades have tended to weaken the employer-employee relationship. First, employment has shifted toward smaller employers and establishments. This change has not been simply the result of growth in services relative to manufacturing; even within manufacturing, it is the smaller establishments that have grown relative to the larger ones. Apparently, smaller firms are better able to cope with market uncertainties than large. In some cases, larger firms may have out sourced work to smaller suppliers in an effort to stabilize core production or to reduce costs. Note that smaller firms typically feature less rich benefit packages than large and have higher rates of employee turnover.

During the 1980s, the growth of a contingent workforce was noted by various researchers.³⁹ Such workers have a lesser degree of commitment from their employers than "regular" workers and often are not covered by the benefit plans which apply to core workers. Unfortunately, labor market statistics do not separate workers by the degree of employer commitment to them.⁴⁰ But it is known that one component of the contingent workforce, employment through temporary supply agencies, has grown much faster than the labor force as a whole.⁴¹

In addition, part-time employment expanded relative to full-time. When asked about such trends, managers confirm them and indicate that their continuance is likely.⁴²

Even apart from employees supplied by temporary help firms, contingent workers may not even formally be the employees of firms that use them; firms may contract out work such as payroll accounting or janitorial services to other employers. One place to look for signs of such tendencies is in the business services sector, which was a source of faster-than-average employment growth in the 1980s. Data on interindustry relationships appear with a great lag and are now

available only through the mid-1980s. Between 1979 and 1984, however, 59 out of the 79 industries classified in the national input-output tables increased their reliance on the business services sector, including 42 out of 52 in manufacturing.⁴³ Workers in the business services sector, who are in the main indirectly working for firms other than their immediate employers, are less likely than "core" workers to enjoy job security and rich benefit packages.

Reflecting all of these changes, job tenure of the American workforce has shown a decrease. Median years reported spent on the current job decreased from 1963 to 1981 when the series stopped being collected. During the 1970s, some (not all) of the drop was due to the entrance of the baby boom into the labor market. In the 1980s, the Bureau of Labor Statistics began a new series on tenure with the current employer (rather than job). By then, the baby boom effect should have reversed. Yet from 1983 to 1987, employment tenure also decreased.⁴⁴

All in all, there has been a decline in the career model of employment. It is difficult for employees to be loyal to a firm whose identity is subject to overnight change and which, in the face of product market volatility, offers little guarantee of job stability.⁴⁵ These changes in the employment relationship pose a challenge to the elaborate system of employee benefits that developed in the post-World War II period; many of these benefits presuppose a continuing employment relationship. They pose a similar problem for benefits that may be mandated or encouraged in the future.

Indeed, there is some evidence of a decline in the coverage of employer-provided health care coverage, even among full-time employees at larger firms during the late 1980s. Almost all such employees still have coverage. But the proportion covered dropped from 97 percent in 1980 to 96 percent in 1985 and 92 percent in 1988.⁴⁶ As employees both at the core and at the periphery see a weaker level of commitment from employers, it is not surprising that they turn to courts and legislation for protection.

Demographic Changes

The weakening of the employment relationship comes at a time when the American labor force is aging. During the 1970s, the baby boom generation entered the labor market; now, there is a bulge in the age profile of the workforce in the middle years. A person born in the mid 1950s probably entered the labor force in the early-to-mid 1970s. By the mid 1990s, such persons will be in their forties. Individuals in

those years often have dependents, family responsibilities, and community ties, and are less mobile than younger workers. Job stability will become an issue for the baby boom generation in a period when such stability has been declining.

Given the demographics, the pressures that have already brought interventions in the labor market, such as opportunities for wrongful discharge suits, continuation of benefit requirements, and plant closing legislation, will intensify. While employers could respond to these changes in employee "tastes" by providing more secure arrangements voluntarily, the product market trends cited earlier suggest that is unlikely to happen. Use of the political mechanism, therefore, becomes more probable.

Growth in the female proportion of the workforce has been a longstanding demographic trend. And in the 1970s, growth of the female workforce accelerated. While much is said about equalizing child care responsibilities between parents, the reality is still that women carry far more of the burden. Marriages themselves are impermanent in any case; two-parent families are not always present. More than a quarter of all children under age eighteen do not live in two-parent families. Of the single-parent households with children, about nine out of ten are headed by the mother.⁴⁷ And, of course, the burden of pregnancy itself, and related health problems, cannot be shared by males. Proposals dealing with mandatory maternity and child care leaves are the political response to the growth in female labor force participation, although paternity leaves are often part of the package.

Generally, health insurance coverage is more likely to be focused on the employee than on the family. That is, the cost of covering other family members is more likely to be borne at least partly by the employee than is the cost of primary coverage for himself/herself.⁴⁸ This tendency means that inflation of health care insurance costs is especially felt by employees with families, especially those with children. Baby boomers have now produced a second-wave baby boom with their children. Again, changing demographics are pushing attention towards employee benefits and workplace practices.

ISSUES OF MOBILITY AND FLEXIBILITY

Employee mobility has long been viewed as a desirable attribute of the American labor market; in the 1980s, it was cited by some as a source of U.S. competitive advantage relative to other countries.⁴⁹ From an economic efficiency point of view, mobility suggests labor

moving to the most productive uses. In the classical economic model, such movement would be accomplished painlessly and costlessly. Employees would change jobs when better opportunities arose. But the real world often does impose costs, especially where involuntary mobility is involved—that is, layoffs. Whether mobility is voluntary or involuntary, costless or not, how do mandated benefits, as well as benefits which have been encouraged by public policy, interact with mobility?

Flexibility and Full Employment

During the 1980s, a debate developed, especially in European countries, over the need for labor-market "flexibility."⁵⁰ European employers looked longingly at the ability of the American employer to lay off workers and argued that they needed similar freedom.⁵¹ In the long term, it was argued, such freedom would lead to expanded employment levels, since employers would no longer have to make permanent commitments to individuals they hired.

There is a circular problem in the quest for flexibility. Pressures to limit the freedom of employers to lay off are likely to arise from fears of unemployment. In an idealized full-employment economy, layoffs would impose only minor costs on workers, since alternative jobs would be readily available. Lack of formal policies of unpaid leave would not be a major issue; employees could effectively take such leaves by quitting their jobs at the appropriate time and then obtaining new jobs at a later date. Apart from the issue of benefit coverage during such periods, "leaves" would simply be periods of non-employment.

In a high unemployment economy, in contrast, incumbent workers—"insiders" in the terminology of European economic modelers—demand protections from displacement by job seekers ("outsiders").⁵² Employers may seek contingent workers, to whom no commitments need be made, to meet peaks in demand. And, indeed, new entrants to the workforces in some European countries, chiefly young people, have been disproportionately hired in various temporary capacities.

Mobility from the Individual Viewpoint

Even in a world of full employment, lack of full portability of benefits can make mobility costly, whether voluntary or involuntary. Benefit plans, such as defined-benefit pensions, health insurance, and life

insurance, may not be fully portable. Often such plans are designed on the assumption of long-term job stability.

Consider an individual who changes jobs frequently, never reaching the five-year tenure on any one job needed to be vested in a pension system. Such a person, even if contributions were made to pension plans on his/her behalf, would see no benefit from them. Thus, there is pressure to remain on the job for at least the whole period before making a career change. But vesting is not the whole story. Even for employees who are vested in a defined-benefit pension plan, the formulas are often tilted against those who leave the plan before early retirement. Working for ten years each at three firms with identical plans may produce a substantially lower pension than working at one firm for thirty years. Again, the benefit structure is an inhibitor of voluntary mobility and makes involuntary mobility (layoff) more expensive to the employee.⁵³

Employees under health plans or life insurance plans may experience similar disincentives to voluntary mobility and higher costs of involuntary mobility. An employee with a serious medical condition or with a dependent with such a condition, might lose health coverage in a job change if the new insurance carrier refuses to insure pre-existing conditions. Similarly, a job change might preclude coverage under the life insurance plan of the new employer if the employee had a risk factor (such as a heart condition) developed previously.

These examples make clear the importance of benefit portability, both for the existing system of voluntary employer-provided benefits and for any mandated benefits that might be enacted. The difficulty is that simply requiring portability can lead to employer incentives to discriminate against employees who they think will be expensive to insure. In effect, therefore, the health examples illustrate an inherent problem in a decentralized benefit system, where the employer pays the costs based on a risk and actuarial analysis of its workforce.

The portability problem is solved when centralized, universal systems of social insurance, such as Social Security, provide the benefits. Workers may move from job to job without diminishing their retirement incomes or other benefits. Certain multi-employer benefit programs, such as exist in the unionized component of the construction industry, have similar characteristics, so long as the employee remains at a covered employer. Each member employer simply pays a designated amount into a welfare fund, typically a specified cents-per-hour contribution.

In both cases, social insurance financed by a payroll tax or the multi-employer contribution model, the cost of providing coverage does not depend on the individual characteristics of the employee.

That is, the age, sex, or health condition of the employee does not influence the payroll tax payment or multi-employer contribution. Hence, there is no incentive for employers to discriminate in hiring against certain employees.

For certain types of benefits, it is possible to make the employee, rather than the employer, the administrator and purchaser of the benefit, thus providing mobility and eliminating incentives to discriminate. The best example of this approach is the individual retirement account (IRA). With an IRA, an employee without an employer-provided pension contributes in pre-tax dollars to a personal pension fund which he/she can take from job to job. Except for contribution limits, there is little difference between an employee-initiated IRA and a 401k savings plan run by an employer. In reality, both are the property of the employee, who takes the savings along from job to job.

The IRA approach in the pension area has been advocated by conservative and business groups which oppose mandated employer-provided benefits. In the health care area, for example, proposals have been made to enhance tax incentives for individuals (rather than employers) to purchase health insurance.⁵⁴ The alternative model of national health insurance financed via a payroll tax is opposed as liable to create a new federal bureaucracy offering low-quality care.⁵⁵ However, the IRA approach to health care runs into a cost problem; individually-purchased health insurance policies are typically much more expensive than group policies.

Part of the discrepancy is simply a matter of economies of scale in administration. However, a still-larger problem is the bugaboo of all insurance programs: adverse selection. Even with tax incentives for individual purchase, those who buy health insurance are likely to be those who believe they have a strong need for it. Individuals who know they have a health problem will be disproportionately represented among the voluntary purchasers, driving up the cost; those who feel they are healthy are more likely to take the risk of not having coverage, especially if they are low-income persons.

The proposed solution to adverse selection has been to advocate creation of large groups, other than employer-related groups, to pool risks.⁵⁶ One could imagine pools created by unions,⁵⁷ religious groups, or community organizations. But, unless coverage by a group were mandated, adverse selection would still be present. The use of a group would surmount only the administrative economies-of-scale problem; the problem of disproportionate representation of high-risk persons would remain.

For benefits which are inherently part of the workplace situation, it

is more difficult to construct an IRA-type model. The proposal for mandated family leaves, for example, would give the employee the right to return to his/her old job, or a comparable job, after a specified leave period. Especially where career ladders are involved, it is hard to come up with an IRA-style equivalent. Some version of an IRA with tax-deferred or even tax-free saving could be created to finance periods during which employees would care for children or other dependents after having quit their jobs. However, the employee would still have to find a new job after the funds ran out, with no guarantee that the new job would be comparable to the old.

Lessons for the Design of Mandates

Current proposals for mandates do not include an expansion of social insurance but rather depend on extension of the existing private system of employer-provided benefits. If such programs are to be implemented, the survey above of issues related to mobility and flexibility suggest that care must be taken to make the mandates similar to social insurance in two respects. First, where relevant, the benefits should be portable from employer to employer, to avoid both hindrance to voluntary mobility and added costs of involuntary mobility. Second, the benefits must be nearly universal in coverage, so that adverse selection can be prevented. Put simply, individuals (or employers) should not be able to opt in and out of the program depending on the immediate needs for benefits. Third, the cost of providing the benefits from the employer perspective should be the same for all employees. In that way, no incentives are created to discriminate in hiring or retention against individuals who are more likely to make use of the benefit.

MANDATED HEALTH INSURANCE

The issue of mandated health insurance arose in response to three interrelated factors. First, estimates from the mid-1980s put the number of individuals not covered by health insurance at about one out of seven.⁵⁸ Since almost all persons over sixty-five are eligible for Medicare or other government health insurance programs, the non-covered population primarily consists of non-elderly who are not so poor as to be eligible for Medicaid. Over a fourth of the non-covered population is below age sixteen and hence, very unlikely to be employed. But many of these young people could be covered as depend-

ents if their parents worked and if their parents' employers provided coverage.

Second, the cost of health care on an out-of-pocket basis has been rising faster than the general rate of inflation for decades. *Relative to the overall Consumer Price Index, the medical price component rose 64 percent during the period 1959-1989.* While many non-covered individuals are older teenagers and young adults, and hence at lower risk than the rest of the population for serious, life-threatening illness, in the event of a crisis, they might find themselves priced out of the medical marketplace. Pregnant teenagers might also benefit from pre-natal care. Thus, extending insurance to these persons would close a significant hole in the health safety net.

Third, even counting Medicare and Medicaid, employment-related insurance looms large in total insurance coverage. Roughly seven out of ten persons who have some form of insurance have it through their own employment (present or past) or the employment of someone else in their household.⁵⁹ With little political sentiment for a national health insurance scheme, one that would pass through the federal budget, the obvious direction for those concerned about the coverage gap was to seek ways of extending employment-related health insurance. Estimates suggest that tax subsidies beyond those already provided would be expensive, since employers which already provided insurance would receive windfalls. And marginal increases in tax subsidies would not be very effective, since the issue is inducing employers who have been least susceptible to previous incentives to respond.⁶⁰ Hence, mandates are seen as a more effective policy.

To the three factors which have influenced the call for mandated health insurance, a fourth, more speculative projection, can be added. Changes in the structure of the workforce—that is, the shift to smaller employers and more contingent employment relationships—could lower future rates of voluntary health care coverage by employers. Indeed, some preliminary indication of such a trend has already been cited above. By imposing a mandate, such tendencies might be offset.⁶¹

So far, only one mandated health insurance plan has been enacted recently, that of the State of Massachusetts. The Massachusetts plan is phased in steps, with the main features to take effect in 1992. Hawaii has had a mandated health insurance plan for some time and other states, including California, are considering the mandated health insurance option.

At the federal level, the "Minimum Health Benefits for All Workers Act" has been under consideration since 1987. Most recently, the Bipartisan Commission on Comprehensive Health Care by an 8-to-7

vote recommended a system of mandated employer-provided health insurance. The Commission's proposal, however, entailed a significant federal government involvement and did not specify a funding mechanism.

The outline of the various proposals and the Massachusetts plan are broadly similar. All mandate the provision of health insurance coverage, with certain exceptions for small firms and/or certain categories of employee. For example, the proposal of the Bipartisan Commission applied its mandate to firms with 100 or more employees. Under certain proposals, employers would have the option of providing the insurance through a private insurance carrier or through paying a payroll tax for the otherwise uninsured, so-called "play-or-pay" systems. In some cases, special assistance is to be provided to small employers. For example, the Massachusetts plan includes assistance in forming small employer groups designed to achieve lower costs of insurance through scale economies. And the Commission's proposal would provide special tax credits for small employers to encourage them to offer health insurance.⁶²

For many of the firms that already provide health insurance to employees, the mandates would have no direct effect. Several large companies have in fact testified in favor of a mandated program. Medical providers, who might stand to benefit from a mandatory expansion of their clientele, have also been supportive. The insurance industry has taken a cautious approach, perhaps out of fear of being stuck with unprofitable new clients.⁶³ However, much of the business community has opposed the mandate approach. Larger firms fear a "foot in the door" which will eventually lead to other mandated programs. Smaller firms (which are least likely to provide health insurance now) fear the added costs. Promises that they can be formed into larger groups and thus achieve lower costs have not been convincing to them.

There is in fact no completely "neutral" program of mandated health benefits, one that would not cause some distortion of employment patterns. For example, any exemptions, for minimum size of firm or for minimum hours of work per week, will create incentives to hold employment or hours below the arbitrary levels specified. But the distortions can be minimized, as already noted, by keeping the financing mechanism as close to a proportional payroll tax as possible.

Conceptually, health benefits might be divided into two components: Tier I, the mandated benefit, and Tier II, anything that employers (or employers and unions) might select voluntarily above Tier I. At least for Tier I benefits, portability should be mandated in case of job change. That is, an employee who changes jobs should not

lose Tier I coverage due to pre-existing personal or dependent medical conditions. In addition, the charge for Tier I should be uniform, and rated on the basis of the overall labor force covered (which will be almost all wage and salary workers) rather than based on the workforce of the particular employer. This approach would ensure that employers would have no incentive to discriminate against employees on the basis of number of dependents or the pre-existing medical conditions of the employee or dependents.

The issue of full-time vs. part-time is more difficult. Costs for providing an individual with a selected package of insurance benefits do not vary with hours worked. If flat charges per employee are levied, the insurance costs for two half-time people "sharing" a job would be double those incurred by one full-time person. Yet it would be undesirable to create a system which artificially discouraged less-than-full-time jobs.

Some analysts have assumed that (abstracting from minimum wage floors) the incidence of whatever charges would be made would ultimately be borne by the employee, leaving total compensation costs unaffected. In such a world, the part-time/full-time problem evaporates. Employees would simply be paid a cash wage which "deducted" the cost of the coverage from what they otherwise would receive. The two half-timers, in the example just cited, would receive sufficiently lower cash wages to make the employer just indifferent between their employment and the employment of one full-timer. This assumption, in fact, was adopted by the Congressional Budget Office (CBO) in estimating the economic impacts of proposed federal health insurance mandates.⁶⁴

The difficulty is that the assumption of complete incidence shifting depends on the existence of one or both of the following attributes of presently uncovered workers: either such workers supply labor on a completely inelastic basis (so that the amount of compensation received has no bearing on their desire for employment or hours) or they value health insurance equal to its cost to the employer (so that to them a dollar for insurance is equivalent to a dollar paid out as cash wages). Yet, these assumptions are less plausible for currently uncovered workers than for the labor force as a whole.

As of the mid-1980s, about six out of ten wage and salary workers had some form of job-related health insurance.⁶⁵ Shifting this figure toward 100 percent is more than a marginal adjustment. Moreover, the coverage rate represents an average of full-timers and part-timers with the latter much less likely to have coverage. CBO data indicate that workers in firms employing fewer than twenty-five employees would be three times more likely to be affected by a federally-mandated program than those in firms with 1,000 or more workers.⁶⁶

Workers in the small-firm/part-time sectors of the economy are more likely than others to be marginal in their labor force attachment (and therefore not in completely inelastic supply). They are likely to be less willing voluntarily to trade cash wages for insurance (in part because some may obtain insurance anyway through spouses or parents and in part because they are more likely to come from lower-income families who need the cash). The proposal for assistance in forming groups of small employers which would achieve scale economies is of obvious interest. But note that if private carriers had seen profitable opportunities to service such groups, they probably would have formed them for commercial reasons.

When these factors are combined with the inability of wages to fall below state and federal minimums, the following tough choices arise. Subsidies may be required, especially for the small-firm/part-time sectors, or to offset disemployment effects resulting from adding insurance costs on top of minimum wage floors. These subventions could be explicit budget subsidies; for example, tax credits. Or, they could be complex transfers required between insurance carriers (which keep the transfers out of the budget). Low-wage and part-time employees could be required to share in the cost of insurance; for example, a half-timer could be required to pay half the cost. This cost payment would reduce some distortions, but would also impose hardships on persons who are least able to bear them. Exemptions could be applied (by size of firm or hours per week or year). These cutoffs could reduce some distortions, but might create artificial incentives to avoid hurdles—for example, cutting part-timer weekly hours from twenty to seventeen if the hurdle is seventeen and one-half hours.

There is no magic bullet which can avoid one or more of these choices and still stay within the framework of privately-provided employer-based health insurance.

Although privately-provided mandatory insurance avoids establishing a government bureaucracy to dispense funds, some increase in government regulation is a necessary accompaniment to such a program. Since the program is mandatory, there will have to be an enforcement mechanism. Moreover, if there is a uniform payroll-based charge for Tier I coverage, private insurers will find some employers more attractive than others. Which employers those will be will depend in part on regulations determining which employer's carrier will be liable in case of duplicate coverage for dependents (since extending coverage will inevitably increase duplication).

Employers whose labor force composition is such that costs of coverage are perceived as likely to be low will be wooed by carriers; those whose costs are seen as likely to be high will be shunned. Some

Either individuals would have to be mandated to join groups (with the regulatory complexities that would entail) or huge tax subsidies might be needed to induce universal, but voluntary, coverage.

Finally, it is important to note that any form of health insurance—employment-based, social, or individual—inherently shields the health care consumer from the marginal cost entailed in providing the service or product. To this characteristic must be added the difficulty consumers have in judging what services or products they need in the medical marketplace, and the fact that such judgments are often made by service providers. The result necessitates the development of health care cost containment mechanisms. Extending health insurance, through mandates or otherwise, will intensify the cost containment problem by adding still more demand to the market.

MANDATED FAMILY LEAVE

Among the medium-to-large firms surveyed by the Bureau of Labor Statistics in 1988, unpaid maternity leaves covered only about a third of employees and unpaid paternity leaves only about a sixth. Median times allowed under maternity and paternity leaves were about four months and three months, respectively. *Paid* maternity and paternity leaves cover an insignificant fraction of the workforce.⁶⁸ The larger the firm, the more likely maternity and paternity leaves will be offered, although even among large firms paid leaves (except for disability of the mother) are quite rare.⁷⁰ There are no reliable data on leaves for care of elderly parents, an issue that will become more pressing for the aging baby boom. But formal policies covering such leaves can be assumed to be quite rare.

In European countries, mandated *paid* maternity leaves are the rule; paid paternity leaves are less common and more limited where they do exist. A number of countries provide for parental leaves after maternity leaves expire, but these are either unpaid or paid through social insurance funds.⁷¹ The gap between American and European practice has undoubtedly contributed to the pressure for mandated leave policies in the United States. However, the basic proposal has been for unpaid leave, with right of return to the same or comparable job. Lack of payment has led to criticism of the proposal as "yuppie welfare," on the assumption that only highly compensated employees would be able to avail themselves of an extended period without pay.⁷² However, public opinion polls suggest the idea evokes a favorable response, even though possible adverse effects on employers and employment are viewed as possibilities.⁷³ Some states have recently

mechanism of carrier assignment will have to be developed for employers who have difficulty finding coverage. Or, coverage will have to be provided through payment to a high-risk pool. Alternatively, if a tax is levied in lieu of a premium, a mechanism will have to be created so that the taxes created go to fund coverage for employees whose employers cannot find private insurance.

In effect, the goal of mandatory employment-based health insurance is to create a program which simulates an egalitarian, centralized, public social insurance scheme such as Social Security, by using a decentralized, private mechanism which—subject to marketplace pressures—features experience-based (non-egalitarian) pricing. Such a system will inherently involve some compromise of objectives and some increase in regulation. But given the objectives, there are only three alternatives. These are 1) to create a new tax-funded, straightforward social insurance program, (say, extension of Medicare to all employees); 2) to enact a massive set of tax or other subsidies which would induce most non-participating employers to offer health insurance; or, 3) to switch to some form of individually-based coverage (at least for Tier 1).

The current tax code already frees the receipt of health insurance from any personal tax liability, at an estimated cost to the U.S. Treasury of \$30 billion in fiscal year 1990, with additional costs to state treasuries.⁶⁷ Yet, despite the potential subsidy available, there remain uninsured workers, at whom the recent proposals are aimed. Thus, the budgetary costs of the additional subsidies required to induce coverage for those remaining uninsured despite the existing incentives would be massive indeed, especially since it would be difficult to exclude those employers who already provide coverage from receiving windfalls.

A switch to individually-based, rather than employer-based, health insurance has been advocated by conservatives seeking an alternative to mandate proposals. For example, it has been suggested that the tax code be amended to permit generous personal deductions for medical expenses (or that some similar subsidy be provided) and that state and local governments aid non-insured individuals in forming autonomous groups to deal with insurance carriers.⁶⁸ There is a case to be made for equalizing tax incentives between employer and non-employer groups under the current system of purely voluntary, but tax-subsidized, health insurance. Unions, religious organizations, or others could be the administrative vehicle for insurance coverage, and should enjoy the same tax advantages. If the goal is universal, or near-universal, coverage, however, much the same problems would arise with alternative groups as now occur with employer mandates.

adopted family and maternity leave laws, notably Wisconsin and Vermont.

The Family and Medical Leave Act vetoed by President Bush would have mandated 12 weeks of unpaid leave for birth or adoption, care of a seriously ill child or elderly parent, or a serious personal illness (thirteen weeks). The proposal also had a contingency standard; if the employer provides health insurance, that insurance must be continued at the employer's expense during the leave. Employers with fewer than fifty employees would be exempt and employees working less than half time during the previous year would be outside the proposal's coverage.

There are two elements of potential cost to this proposal, which is very likely to reappear in some form.⁷⁴ The first is the continuance of health insurance during the leave. A study by the General Accounting Office (GAO) estimated that about 0.3 percent of the workforce would avail themselves of mandated leaves, at a health insurance cost of \$226 million (as of 1989). The second type of cost is administrative; that is, the disruption and inconvenience of having to hold open a slot and find a temporary replacement, or find a comparable job for returnees. GAO assumed that such costs would be negligible, based on surveys of employer practices in firms which voluntarily offer such leaves.⁷⁵ Representatives of smaller firms, however, have emphasized such costs and have noted that under some state UI systems employers might be liable for increased unemployment insurance taxes as they laid off temporary replacements when regular workers returned from leave.⁷⁶

There is some incentive in mandatory leave bills for employers to discriminate against potential new hires likely to use the benefit. In the main, married women of child-bearing age would be the primary target. Hypothetically, the cost to employers of such leaves might be financed through a centrally-run national social insurance fund through a tax that would be assessed on all employers uniformly. Those employers whose employees actually took leaves would receive a compensating subsidy from the fund, thus eliminating the incentive to discriminate. However, the amount of money involved for unpaid leaves is so small as to make such a scheme impractical. Of course, for those larger firms which already have significant leave plans, mandatory leave would not change hiring incentives (since it would be redundant).

Employers are increasingly concerned about adding flexibility to traditional workplace practices because of the demographic influences which were discussed previously. During 1988-89, firms began to experience labor shortages in various regions and occupations.

These pressures led to consideration of ways to accommodate employee needs for reasons of recruitment and retention. In some instances, corporate rethinking of family issues has produced leave programs similar to those proposed under mandating. But for many parents the issue of long-duration leaves is less pressing than that of formalized arrangements for short-term emergencies (such as child care for sick children) in the context of dual-worker or single-parent families.⁷⁷

THE LACK OF CONSENSUS ON WORKPLACE ISSUES

At the outset of this chapter, a significant lack of consensus was noted on a variety of workplace issues. This lack of consensus is reflected in the growing interest in mandated benefits and in the more general question of the role of government intervention in determining employment conditions. It is particularly important for the employer community to consider why, in a period when deregulation in product markets has been in vogue, labor-market regulation has increased. Absent a mechanism for national consideration of issues surrounding the employment relationship, piecemeal solutions to employment problems will continue to arise. Employers will continue to feel beleaguered by potential and actual forms of intervention. They will not see the linkage between these developments and their own internal policies. Employees will continue to feel that the political process offers remedies for workplace complaints which the private marketplace or collective bargaining no longer provides.

Social Insurance vs. Private Benefits

Social insurance programs have the advantage of avoiding barriers to mobility because they avoid the issue of portability. They also avoid adverse selection, through universality. They avoid incentives to employers to discriminate against persons with above-average benefit needs through uniform payroll tax rates. And, of course, they have been politically popular; politicians have rightfully been fearful of the change that they favor policies which undermine Social Security.

Private benefit programs are also popular. But, as currently constituted, they are often based on assumptions of long-term employment relationships which may not reflect the realities of the 1990s. Economists tend to rationalize the current provision of mobility-inhibiting benefits as optimum solutions. But that view runs into two problems

of historical fact. First, the expansion of private employer-provided benefits is a post-World War II phenomenon. Some of the impetus for offering benefits was a defensive reaction of nonunion employers seeking to compete for the loyalty of their employees with potential outside unions. Second, it is doubtful that the current volume of benefit offerings would be anywhere near what it is without tax subsidies. How many employers would offer pensions if the value of pension contributions were immediately taxable to the employee?

In addition, the mobility limitations imposed by employer-provided benefits are often arbitrary. Why is it in the interest of either employer or employee to inhibit the mobility of employee A who happens to have a child with a serious medical condition, but not to inhibit identical employee B, who has a healthy child? Study of the actual structure of benefit incentives reveals much peculiarity of incentives which seems to result from haphazard practices rather than from careful study of marginal advantage.

Private benefits do have the virtue of tailoring to local needs. They may be more efficiently provided than bureaucratically-run systems. And, they have become part of the overall program of American social policy, with powerful constituents, including insurance carriers and benefit consultants. Clearly, there are trade-offs to be made between social insurance and employer-provided benefits. But there has not been much effort to define where those trade-offs lie or what alternative costs might be.

The Federal Budget Deficit

The large federal budget deficits which developed in the 1980s create pressures to shift the cost of social programs to the private sector. These pressures can also be seen outside of the employee benefit area. Already noted has been the attempt to use the employment relationship as a means of shifting the costs of policing drug use by encouraging job-related drug testing. Under legislation passed in 1986, costs of immigration policing have also been shifted to the workplace; employers are required to avoid hiring illegal aliens and to maintain elaborate records proving that they are screening the legal status of job applicants. Absent a consensus on eliminating the deficit, there will continue to be moves to relocate social policy to the workplace. Mandated benefits are merely a part of that process.

The Employment Contract

What is the duty of the employer under the employment contract? Until the at-will doctrine of employment began to erode, the legal

answer was that, absent an explicit agreement to the contrary, the employer had no duties other than to pay promised wages for hours already worked. Job security was not part of an implicit contract and certainly the provision of particular benefit plans was purely a matter of employer discretion. Despite these legal assertions, it was never the case that employees (as opposed to lawyers and judges) perceived the relationship as being so limited. Commentators on the employment scene have long noted that employees saw a quasi-property-right in their jobs, especially after several years of service, even if they had no means of enforcing that right.⁷⁸

With the rise of wrongful discharge litigation and the increasing regulation generally of the employment contract through the political process, a *de facto* revision of that contract is taking place. Demographic influences discussed earlier suggest this trend will continue. And the growth of the contingent work force has now raised issues about the obligations of employers to temporary employees. But the changes are occurring on an item-by-item basis, without any vision of the larger question of who should owe what to whom in the employment relationship. Without consideration of this larger question, continuation of the piecemeal approach is assured. Mandated benefits are simply a symptom of the current case-by-case approach.

Employee Representation

Only one out of seven private workers were unionized in the United States by the late 1980s. Thus, most such employees have no outside advocate to represent them in the workplace. Some nonunion employers have installed various worker participation devices (quality circles) but these deal primarily with production methods; they do not negotiate such issues as benefit packages and, indeed, there are legal barriers if they were to be used in that fashion.

Absent some other forum for representation, Congress, the state legislatures, and the courts are becoming part of an amorphous, uncoordinated national employee representation plan. The decline in unionization is usually seen as costly to unions as institutions and to those employees who would prefer to have a collective voice in their relationships with their employers. Ironically, from the perspective of American management as a whole, the shift of workplace issues to outside legal and political forums also is perceived as undesirable. Yet the drop in the use of collective bargaining for handling workplace issues privately is due in part to the actions of many individual employers.

Full Employment

Concern about maintaining full employment seemed to fade in the 1970s, under the impact of stagflation. Such concern seemed almost to vanish in the 1980s. While a low unemployment rate is now seen as a nice byproduct of the overall performance of the economy if it occurs in a context of low inflation, it does not now appear to be a specific goal of public policy, as it was in the 1960s. But the public's nervousness about job loss has not vanished; it now takes the form of legalistic individual remedies (such as wrongful discharge suits) and political remedies (such as plant closing legislation, and requirements for continuation of benefits during unemployment). At some future date, it may take the form of European-type limits on the right to lay off.

In a labor market in which mobility is perceived as difficult or costly, employees are bound to be concerned about what would happen to them in the case of a termination or layoff. They are bound to be reluctant to quit jobs, even when family needs arise, if the prospects of obtaining a comparable position later are uncertain. The issue of full employment is thus intimately connected with issues such as the structure of benefits and provisions for temporary leave. But absent a political interest in full employment *per se*, these issues will continue to be treated in an isolated fashion.

PULLING IT TOGETHER

The question of mandated benefits has been shown to be part of a larger set of issues surrounding the labor market and the employment relationship. Of the five key areas identified above in which consensus is lacking, only one—dealing with the federal budget deficit—really falls outside the employment sphere. Absent a more comprehensive view of the nature of employment in the 1990s, public policy seems drawn to deadlock and inconsistency.

Two recent examples indicate the current dilemma. As already noted, Congress adopted Section 89 of the Internal Revenue Code in 1986 in an effort to spread the offering of health and other benefits to certain part-timers and other low-paid workers. But in 1989, the entire section was repealed in response to an outcry over regulatory complexity. In 1988, Congress adopted a new catastrophic health care program as part of Medicare. Apart from its impact on elderly participants, the program required complex changes in the retiree health benefit plans offered by many employers. Yet again in 1989,

the entire program was repealed after a dispute about program finance.

Such an on-again/off-again approach to public policy is undesirable. It reflects an inability to see social issues, workplace issues, and the employment relationship in broader perspective. But the United States lacks an ongoing forum in which the interconnections of such issues can be discussed and a consensus reached, if possible. Nonetheless, Americans need to review the employment relationship as the twentieth century ends, and come to an understanding about which problems are best solved at the workplace and what mechanisms might best bring about such solutions. They also need to consider which problems are not well suited for decentralized workplace-by-workplace solutions.

Even though an ongoing forum for such a review does not exist, it is possible to create one. Reference has already been made to the 1945 White House conference on labor-management relations which was established to air conflicting views on the nature of the employment relationship in the post-World War II period. Even though that conference featured sharp disagreements, it can be seen with hindsight as having contributed importantly to the framework for labor-management relations that lasted for the next quarter century. The issues were at least all on the table at the same time. And, although the participants may not have felt that a consensus was reached, in a complex way a political consensus was established. Public policy and the rules of the game in collective bargaining were influenced by the interaction.

In the 1990s, there are more players surrounding the labor market than there were in 1945. Employers, unions, insurance carriers, health care providers, and groups concerned with family and life-cycle issues clearly have all participated in the current piecemeal approach to the problems discussed in this chapter. So, too, have political leaders at the federal and state levels. And, of course, there are millions of unrepresented employees who have had a voice in shaping public policy only through the indirect means of the electoral process. In contrast to the situation immediately after World War II, there are too many players today to deal with their interests in a representational forum.

A more practical solution would be to create a national commission charged with analyzing the employment relationship and its linkage to pressing social issues. Commissions have the capacity to obtain data and sponsor reports as well as to take testimony from interested parties. Even the opinions of the large body of unrepresented employees can be analyzed in such a forum through study of polling data.

Among the many issues such a commission might discuss are:

- methods of spreading availability of health insurance; employer mandates vs. provision through extension of Medicare vs. additional tax incentives for coverage by smaller employers;
- ways of increasing the portability of private benefits such as pensions and health insurance;
- adapting workplace policies to changing family and life-cycle patterns;
- alternatives to the use of litigation in settling workplace complaints;
- approaches to expanding employees' voice in the workplace; and
- the neglected topic of achieving full employment.

The employment relationship is central to American life and economic welfare. For most people, income is largely based on their own employment or that of a family member. For the country as a whole, economic progress depends importantly on how the employment relationship is conducted. Almost all key national problems—education, the environment, international competitiveness, immigration—have substantial connections with employment. It is time to bring these connections to a common forum.

NOTES

1. The Family and Medical Leave Act passed in 1993 but vetoed by President Bush, and the Minimum Health Benefits for All Americans Act are two key examples. The former was designed to require employers to provide unpaid leaves of absence, but with guaranteed rights of return, to employees under specified conditions involving childbirth or other circumstances. The latter would require employers to provide health insurance. Beyond these particular bills, and given concerns about the national rate of saving, productivity, and job security, one can readily imagine proposals in the future dealing with retirement savings, mandated pensions, mandated employee participation committees, or mandated limits on layoffs and terminations.
2. U.S. Bureau of the Census, *Statistical Abstract of the United States, 1989*. Washington, D.C.: GPO, 1989, p. 351.
3. Donald Bell and Diane Hill, "How Social Security Payments Affect Private Pensions," *Monthly Labor Review* 107 (1984): 15-20.
4. Tax rates for UI are not fully experience rated, so that there can be a net subsidy to layoff-prone personnel policies. For more discussion, see Daniel J.B. Mitchell, *Human Resource Management: An Economic Approach*, Boston, MA: PWS-Kent Publishing Co., 1989, pp. 355-360.
5. U.S. Bureau of the Census, *Statistical Abstract 1989*, p. 351.

6. U.S. Bureau of the Census, *Statistical Abstract, 1989* p. 411.
7. For example, managers and farm workers are the two occupational groups which are most prone to have workweeks exceeding forty hours. But both are also the groups with the lowest rate of receipt of overtime pay for the extra hours. See Daniel E. Taylor and Edward S. Sekscenski, "Workers on Long Schedules, Single and Multiple Jobholders," *Monthly Labor Review* 105 (1982): 47-53.
8. U.S. General Accounting Office, *Plant Closings: Limited Advance Notice and Assistance Provided Dislocated Workers*, GAO-87-105, Washington, D.C.: GAO, 1987; Sharon P. Brown, "How Often Do Workers Receive Advance Notice of Layoffs?" *Monthly Labor Review* 110 (1987): 13-17.
9. There are no comprehensive and continuous data on wrongful discharge cases. A Rand study found over 50 filings per month of such cases at the Los Angeles Superior Court alone in the mid 1980s. See James N. Dertouzos, Elaine Holland, and Patricia Ebener, *The Legal and Economic Consequences of Wrongful Termination*, R-3602-1CJ Santa Monica, CA: Rand Corporation, 1988, p. 15.
10. U.S. Bureau of the Census, *Statistical Abstract 1989*, op. cit., p. 97.
11. A listing of such state standards can be found in John N. Erlenborn, "Statement on the Minimum Health Benefits for All Workers Act of 1987," U.S. House of Representatives, Committee on Energy and Commerce, *Minimum Health Benefits for All Workers*, hearings, April 14-15, 1988, Washington, D.C.: GPO, 1988, p. 98.
12. U.S. Bureau of the Census, *Statistical Abstract, 1989*, Washington, D.C.: GPO, 1989, p. 409. The main exemption from ERISA standards is for pensions in the public sector.
13. *General Electric v. Gilbert*, 429 U.S. 125, 1976.
14. U.S. Bureau of Labor Statistics, *Employee Benefits in Medium and Large Firms, 1988*, Bulletin 2336, Washington, D.C.: GPO, 1989, p. 3.
15. U.S. Bureau of Labor Statistics, *Employee Benefits in Medium and Large Firms, 1986*, Bulletin 2281, Washington, D.C.: GPO, 1987, p. 81.
16. U.S. Departments of Labor and Treasury, *The Use of Tax Subsidies for Employment*, Washington, D.C.: GPO, 1986.
17. These data will be reviewed more fully below in the discussion of proposed mandated health insurance.
18. Twelve percent of full-time employees in medium-to-large private firms were offered "reimbursement accounts" in 1988. These accounts included those for child care but also included some for medical expenses. Hence, the 12 percent figure is an upper-limit estimate for child care alone. Joseph R. Meisenheimer II and William J. Waitrowski, "Flexible Benefit Plans: Employees Who Have a Choice," *Monthly Labor Review* 112 (1989): 19.
19. The Carter program threatened cutoffs of government contracts to firms which did not cooperate; thus, for federal contractors, it was not voluntary.
20. The Bureau of Labor-Management Relations and Cooperative Programs of the U.S. Department of Labor has issued a series of case studies of successful cooperation. Conferences and experiments have been sponsored by the Federal Mediation and Conciliation Service.

21. Federal contractors must have anti-drug policies under the Drug-Free Workplace Act of 1988. Such policies do not necessarily include testing or EAPs. However, employees must be informed about the availability of an EAP (if one exists). Employees convicted of a drug violation must be sanctioned or referred to a rehabilitation program. Thus, an implicit encouragement of EAPs is part of the law.
22. See, for example, Eric Rasmusen, "Using Mandated Fringe Benefits to Capture Quasi-Rents," business economics working paper no. 88-14, Anderson Graduate School of Management, UCLA, July 15, 1989. Rasmusen notes that if wages are sticky (a departure from the pure classical model), then mandates may temporarily increase total compensation (wage plus mandates) and give workers a near-term benefit. But they would have to balance the near-term gain against the long-term inefficiency loss. Empirically, however, most economists would conclude that the stickiness effect would have only a very short impact, except for minimum wage workers whose nominal wages cannot fall. See Charles E. Phelps, "National Health Insurance by Regulation: Mandated Employee Benefits," working paper P-6391, Rand Corporation, 1980, p. 6.
23. Richard B. McKenzie, *The American Job Machine*. New York, NY: Universe Books, 1988, p. 224.
24. Since the 40-hour standard does not specify the time of day at which the hours are to be worked, there is still a coordination problem. A clearer example of time coordination is the federally-orchestrated switch between daylight and standard time.
25. Sanford M. Jacoby, *Employing Bureaucracy: Managers, Unions, and the Transformation of Work in American Industry, 1900-1945*. New York, NY: Columbia University Press, 1985.
26. Edward P. Lazear, "Pensions and Deferred Benefits as Strategic Compensation," *Industrial Relations*, forthcoming.
27. Louis O. Kelso and Patricia Hetter Kelso, *Democracy and Economic Power: Extending the ESOP Revolution*, Cambridge, MA: Ballinger Publishing Co., 1986.
28. U.S. Bureau of Labor Statistics, *Employee Benefits in Medium and Large Firms, 1988*, p. 106.
29. The Bureau of Labor Statistics estimates that union membership accounted for about 35 percent of nonfarm payroll employment in 1954. Since unionization rates in public employment were relatively low in that period, and since some workers were covered by collective bargaining but were not union members, the overall figure of union representation was closer to 40 percent.
30. Estimate based on data on wages and salaries originally in Sanford M. Jacoby and Daniel J.B. Mitchell, "Measurement of Compensation: Union and Nonunion," *Industrial Relations* 27 (1988): 215-231, and adjusted to take account of benefits. See Daniel J.B. Mitchell, "Wages Pressures and Labor Shortages: The 1960s and the 1980s," *Brookings Papers on Economic Activity*, vol. 2, 1989.
31. Thomas A. Kochan, Harry C. Katz, and Robert B. McKersie, *The Transformation of American Industrial Relations*, New York, NY: Basic Books, 1986, especially chapter 3. Various authors have noted the rise in employer unfair labor practices, based on data from the National Labor Relations Board, beginning in the 1960s. See, for example, Richard B. Freeman and James L. Medoff, *What Do Unions Do?* New York, NY: Basic Books, 1984, pp. 230-233.
32. "Union Coverage of U.S. Private Workforce Predicted to Fall Below 5 Percent by 2000," *Daily Labor Report*, December 18, 1989, pp. A1-A3.
33. U.S. Department of Labor, Division of Labor Standards, *The President's National Labor-Management Conference, November 5-30, 1945*, Bulletin no. 77, Washington, D.C.: GPO, 1946.
34. John Kenneth Galbraith's descriptions of the American economy of the period can be found in various writings including his *American Capitalism: The Concept of Countervailing Power*, (revised edition), Boston, MA: Houghton Mifflin, 1956.
35. Richard A. Lester, *As Unions Mature: An Analysis of the Evolution of American Unionism*, Princeton, NJ: Princeton University Press, 1958.
36. The original proposition that the value of the firm was independent of its capital structure was first put forward in Franco Modigliani and Merton Miller, "The Cost of Capital, Corporation Finance and the Theory of Investment," *American Economic Review* 48 (1958): 261-297. However, it took some time for the ideas presented to percolate into general usage. For a review, see Merton H. Miller, "The Modigliani-Miller Propositions After Thirty Years," *Journal of Economic Perspectives* 2 (1988): 99-120.
37. Richard S. Belous, "Flexibility and American Labour Markets: The Evidence and Implications," working paper no. 14, World Employment Programme Research, International Labour Office, Geneva, 1987, pp. 29-36.
38. Michael J. Fiore and Charles F. Sabel, *The Second Industrial Divide: Possibilities for Prosperity*, New York, NY: Basic Books, 1984.
39. Katharine G. Abraham, "Flexible Staffing Arrangements and Employers' Short-Term Adjustment Strategies," working paper no. 2617, National Bureau of Economic Research, 1988; Richard S. Belous, *The Contingent Economy: The Growth of Temporary, Part-Time and Subcontracted Workforce*, Washington, D.C.: National Planning Association, 1989. The phrase "contingent worker" appears to have been coined by Audrey Freedman of the Conference Board.
40. Anne E. Polivka and Thomas Nardone, "On the Definition of 'Contingent Work,'" *Monthly Labor Review* 112 (1989): 9-16.
41. Max L. Carey and Kim L. Hazelbaker, "Employment Growth in the Temporary Help Industry," *Monthly Labor Review* 109 (1986): 37-44.
42. Kathleen Christensen, *Flexible Staffing and Scheduling in U.S. Corporations*, research bulletin 240, New York, NY: The Conference Board, 1989, pp. 10, 20.
43. The data cited were drawn from input-output tables (use of commodities) appearing in Interindustry Economics Division, "Annual Input-Output Accounts of the U.S. Economy," *Survey of Current Business* 69 (1989): 25-40; U.S. Bureau of Economic Analysis, *Summary Input-Output Tables of the U.S.*

Economy: 1976, 1978, and 1979, PB88-167403, Springfield, VA: National Technical Information Service, 1988.

44. Sanford M. Jacoby and Daniel J.B. Mitchell, "Sticky Stories: Economic Explanations of Employment and Wage Rigidity," Proceedings of the American Economic Association, *American Economic Review* 80 (1990). Median interrupted spells of job tenure declined during 1983-81 from 5.7 years to 4.0 years for males and from 3.0 years to 2.5 years for females. During 1983-87, median employment tenure dropped from 5.1 years to 5.0 years for males and from 3.7 years to 3.6 years for females.

45. Lester C. Thurow, "Producer Economics" in Barbara D. Dennis, (Ed.), *Proceedings of the Forty-First Annual Meeting*, December 28-30, 1988, Madison, WI: IRRRA, 1989, pp. 9-20.

46. U.S. Bureau of Labor Statistics, *Handbook of Labor Statistics*, Bulletin 2340, Washington, D.C.: GPO, 1989, p. 583; U.S. Bureau of Labor Statistics, *Employee Benefits in Medium and Large Firms, 1988*, Bulletin 2336, Washington, D.C.: GPO, 1989, p. 123. Data cited are on a consistent basis and do not reflect changes in survey coverage made in 1988.

47. U.S. Bureau of the Census, *Statistical Abstract, 1989*, p. 52.

48. U.S. Bureau of Labor Statistics, *Employee Benefits in Medium and Large Firms, 1988*, p. 3.

49. Committee for Economic Development, *Work and Change: Labor Market Adjustment Policies in a Competitive World*, Washington, D.C.: CED, 1987, p. 31.

50. Organisation for Economic Cooperation and Development, *Flexibility in the Labour Market: The Current Debate*, Paris: OECD, 1986, chapter 3; Organisation for Economic Cooperation and Development, *Economies in Transition: Structural Adjustment in OECD Countries*, Paris: OECD, 1989, pp. 56-63.

51. However, not all observers agree that European workplace arrangements have in fact been less flexible than American with regard to layoffs and hires. See Michael J. Piore, "Perspectives on Labor Market Flexibility," *Industrial Relations* 25 (1986): 146-166. European unemployment problems in the 1980s may well have been due more to macro-level problems regarding inflexibilities in the wage-price mechanism than to micro-level labor-market institutions.

52. Assar Lindbeck and Dennis J. Snower, "Wage Setting, Unemployment, and Insider-Outsider Relations," *American Economic Review* 76 (1976): 235-239.

53. Hay/Huggins Company, Inc., *The Effect of Job Mobility on Pension Benefits*, report submitted to the U.S. Department of Labor, Pension and Welfare Benefits Administration, PB88-232194, Springfield, VA: National Technical Information Service, 1988.

54. Heritage Foundation, "Minimum Health Benefits Act: Mandating New Problems," Issue Bulletin No. 136, January 29, 1988.

55. Jack Meyer, *Mandated Benefits for Employers: A Policy Analysis*, Washington, D.C.: National Chamber Foundation, 1989, p. 31.

56. Meyer, *Mandated Benefits*, p. 32.

57. Unions have begun offering "associate memberships" to employees who are not represented for collective bargaining purposes. Health insurance

could be provided to such persons as part of these memberships. In effect, unions would return to the model of the "friendly societies" or "beneficial societies" of the turn of the century.

58. U.S. Bureau of the Census, *Statistical Abstract, 1989*, p. 96.

59. The main source of data on health insurance coverage is the Current Population Survey, in which individuals are asked about their coverage status. Unfortunately, individuals' knowledge of coverage may be imprecise and discrepancies and inaccuracies are inevitable. Thus, while 147 million are reported as having some form of employment-related coverage as of 1985, other data on current employee coverage suggest a lower figure. Information is requested as to whether the insurance provided to current employees covers one person, two persons, etc., up to five-or-more persons. Even a generous allowance for the open-ended interval suggests total coverage of no more than 130 million, based on current employment. Some of the 147 million are retirees who receive continued coverage from employers. But even a generous allowance for these would reduce the figure to around 140 million, leaving a discrepancy of at least ten million. Data on employment-related coverage appear in U.S. Bureau of the Census, *Statistical Abstract, 1989*, p. 96. Data on current employee coverage appear in U.S. Bureau of the Census, *Receipt of Selected Noncash Benefits: 1985*, Series P-60, No. 155, Washington, D.C.: GPO, 1987, Table 17.

60. Patricia M. Danson, "Mandated Employment-Based Health Insurance: Incidence and Efficiency Effects," working paper, Wharton School of the University of Pennsylvania, December 1989.

61. It does not appear that industrial composition shifts by themselves will lower health coverage. Projections on changing employment composition between 1979 and the year 2000 were used to estimate coverage in 2000 based on 1979 industry rates of health care provision. No substantial changes were estimated in the overall coverage ratio. Data source: U.S. Bureau of Labor Statistics, *Projections 2000*, Bulletin 2302, Washington, D.C.: GPO, 1988; Valerie A. Personick, "Industry Output and Employment: A Slower Trend for the Nineties," *Monthly Labor Review* 112 (1989): 26; U.S. Bureau of the Census, *Characteristics of Households and Persons Receiving Selected Noncash Benefits: 1980 (With Comparable Data for 1979)*, series P-60, No. 131, Washington, D.C.: GPO, 1982, Table 38.

62. The Massachusetts plan becomes fully effective in 1992 and will require an employer contribution of 12 percent of the first \$14,000 in wages to a state fund but with health insurance premiums deductible from this amount. Employers with five or fewer persons and those in the first year of business are exempt. The plan initially proposed in the California legislature (Assembly Bill 350) applied to employers with five or more employees and required that a specified set of minimum benefits be offered to meet the law's definition of health insurance, but was unclear about requirements for employers who did not elect to provide coverage. A more elaborate program has been reported as under development by the Governor's office, involving elements of subsidy from sources such as the state tobacco tax. Under the proposed federal Minimum Health Benefits for All Workers Act, employers who did

Leave," *European Industrial Relations Review*, July 1989, pp. 13-19; "Time Off for Family Responsibilities: Part Two," *European Industrial Relations Review*, October 1989, pp. 17-22.

72. Dick Arney, "Parental Leave Act Is Just Yuppie Welfare" reproduced in U.S. Senate, Committee on Labor and Human Resources, *Parental and Medical Leave Act of 1987*, hearings, February 19, April 23, June 15, 1987, Washington, D.C.: GPO, 1988, Part 1, p. 290.

73. Opinion Research Corporation, "A Majority of the Public - Regardless of Sex, Age, or Employment Status - Support Parental Leave Legislation" reproduced in U.S. Senate, Committee on Labor and Human Resources, *Parental Leave Act of 1987*, hearings, July 20, September 14, October 13, October 29, 1987, Washington, D.C.: GPO, 1988, Part 2, pp. 575-581.

74. The Family and Medical Leave Act of 1990.

75. The bill has been amended at various points. Cost estimates are sensitive to the size-of-firm cutoff. For earlier cost estimates based on alternative versions of the bill see U.S. General Accounting Office, *Parental Leave: Estimated Cost of Revised Parental and Medical Leave Act Proposal*, GAO/HRD-88-132, Washington, D.C.: GAO, 1988; U.S. General Accounting Office, *Parental Leave: Estimated Costs of H.R. 925, The Family and Medical Leave Act of 1987*, GAO/HRD-88-34, Washington, D.C.: GAO, 1988. The GAO estimates cited in the text were obtained from Senator Christopher J. Dodd's office.

76. John Motley III, "Statement of John Motley III, Director of Federal Governmental Relations of NFIB," in U.S. Senate, Committee on Labor and Human Resources, *Parental and Medical Leave Act of 1987*, Part 2, pp. 547-574.

77. For some case studies of corporate responses and policies, Bureau of National Affairs, Inc., *Corporate Work & Family Programs for the 1990s: Five Case Studies*, series on work & family, special report no. 13, Washington, D.C.: BNA, 1989; Bureau of National Affairs, Inc., *Sick Child Care: Employers' Prescriptions for the 1990s*, series on work & family, Special Report No. 14, Washington, D.C.: BNA, 1989.

78. Frederic Meyers, *Ownership of Jobs: A Comparative Study*, Los Angeles, CA: UCLA Institute of Industrial Relations, 1964, pp. 10-11.

not provide specified coverage would have to pay a fine of up to 10 percent of payroll. Covered employers would be those subject to the federal minimum wage. Employees would be covered if they worked for 17.5 hours or more per week.

63. For favorable testimony from large firms, see statements submitted by American Airlines and Chrysler. For a statement of a health product provider, see that of Baxter Travenol Laboratories. Metropolitan Life Insurance Co. expressed reservations about the mandate approach, preferring added incentives, but supporting the idea of private provision rather than a government program. See U.S. Senate, Committee on Labor and Human Resources, *Minimum Health Benefits for All Workers Act of 1987*, hearings, June 24, 1987, Washington, D.C.: GPO, 1988, Part 1, pp. 19-28, 32-38, 41-48, 107-114.

64. Edward M. Gramlich, "Statement of Edward M. Gramlich, Acting Director, Congressional Budget Office," U.S. Senate, Committee on Labor and Human Resources, *Minimum Health Benefits for All Workers Act of 1987*, hearings, November 4, 1987, Washington, D.C.: GPO, 1988, Part 2, pp. 58-76.

64. U.S. Bureau of the Census, *Statistical Abstract, 1989*, op. cit., p. 409. Separate data on full-time and part-time coverage rates were not published by the Bureau of the Census although the number of covered workers in each category was published for 1985. A downward-biased estimate for coverage can be obtained by dividing the number of full- and part-time covered workers by individuals in each category reporting some work experience in 1985. This technique produces an overall coverage rate of 56 percent (compared with 60 percent for all workers reported in U.S. Bureau of the Census, *Statistical Abstract of the United States, 1988*, Washington, D.C.: GPO, 1988, p. 396.) The 56 percent figure represents an average of 67 percent for full-timers and 16 percent for part-timers. Full- and part-time coverage data are from U.S. Bureau of the Census, *Receipt of Selected Noncash Benefits: 1985*, Table 17. Work experience data are from U.S. Bureau of Labor Statistics, *Handbook of Labor Statistics*, Table 49.

66. Gramlich, "Statement of Edward M. Gramlich," p. 67.

67. U.S. Office of Management and Budget, *Special Analyses, Budget of the United States Government, Fiscal Year 1990*, Washington, D.C.: GPO, 1989, p. G43.

68. Heritage Foundation, "Minimum Health Benefits Act," pp. 14-15; Jack Meyer, "Prepared Statement of Jack Meyer, President of New Directions for Policy," U.S. Senate, Committee on Energy and Commerce, *Minimum Health Benefits for All Workers*, hearings April 14-15, 1988, pp. 290-295.

69. U.S. Bureau of Labor Statistics, *Employee Benefits in Medium and Large Firms, 1988*, pp. 13-14.

70. A Conference Board sample of firms with a median employment size of 3,000 found that 60 percent had maternity leaves (beyond disability) and 44 percent had paternity leaves. But only 6 percent of these were paid leaves. See Kathleen Christensen, *Flexible Staffing and Scheduling in U.S. Corporations*, Research Bulletin 240, New York, NY: Conference Board, 1989, p. 20.

71. "Time Off for Family Responsibilities: Part One, Maternity/Paternity