

SYMPOSIUM

The Hidden Faces of Unemployment

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FIGHTING UNEMPLOYMENT: FARMWORKERS AND THE PERPETUAL BATTLE FOR UNEMPLOYMENT INSURANCE BENEFITS

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I. INTRODUCTION

Unemployment is an issue that currently either faces or threatens every worker in this country. Farmworkers, however, experience unemployment many times every year simply because of the seasonal nature of their work. This relationship with the experience of unemployment is complicated by frequent and intense barriers preventing or delaying access to the unemployment benefits that could make these periods somewhat tolerable.¹ Further, farmworkers who are fortunate enough to be employed during high periods of unemployment often find themselves weighing the pains of joblessness against the pains of remaining in a workplace where there is unconscionably high stress due to increased competition for their jobs. Together, these factors place farmworkers in a one-of-a-kind position in which they are fighting unemployment in almost every conceivable context—to keep their jobs, to keep their jobs

¹ Enrico Moretti, *Do Wages Compensate for Risk of Unemployment? Parametric and Semiparametric Evidence from Seasonal Jobs*, 20 J. RISK & UNCERTAINTY 45. 48 (2000).

tolerable, and, if those fights are lost, to access unemployment benefits.

II. WHO ARE FARMWORKERS?

Beneath the growing glamour of the movements for fresh, local, and organic produce are the millions of women and men who handle every piece of that produce as it is grown, harvested, packed, and subsequently shipped to market. American farmworkers are a resilient, diverse people without whom American lives would be forever changed. While it is impossible to fully describe the depth and breadth of individuals who make up the farmworker population, it is instructive to consider a general overview of farmworker demographics because these factors contribute to the challenges and injustices they suffer.

In very broad terms, farmworkers are individuals who labor in agriculture under the employ and supervision of an agricultural producer or owner.² Within this broad category are those who work on a year-round basis and those who work on a seasonal basis. Year-round, or permanent farmworkers, tend to work in livestock or other farms where year-round work is available.³

Seasonal farmworkers, on the other hand, work in shorter periods throughout a given year depending on the particular crop cycles and the types of work needed, such as pruning, tying, weeding, irrigating, harvesting, or packing.⁴ Within the general category of seasonal farmworkers are *migrant* farmworkers who travel away from their permanent homes, if they have them, to follow crops, and thus employment.⁵ Flows of migratory workers to

² WILLIAM KENDEL, USDA PROFILE OF HIRED FARMWORKERS, A 2008 UPDATE, at 2 (2008), *available at* <http://www.ers.usda.gov/publications/err60/err60.pdf> (defining farmworker as “hired farmworker,” distinguishing this category of agricultural worker from farmworkers who are owners and their family members).

³ *Id.*

⁴ *Id.*

⁵ Notably, “migrant” does not mean the same as “immigrant,” though many people confuse the terms. Migrant workers may be U.S. citizens or immigrants of any status; they are migrant by virtue of their transitory work, not as a result of their country of origin. Migrant and Seasonal Agricultural Worker Protection Act of 1983, 29 U.S.C.S. § 1802(8) (2010) (defining a migrant agricultural worker as an individual who is employed in agricultural employment of a seasonal or other

and from different areas act to equalize labor demand and labor supply throughout the course of each year.⁶

The United States relies on approximately two to three million seasonal farmworkers.⁷ California is home to almost 40 percent of them. The California seasonal farmworker population is estimated to peak at 440,000 annually.⁸ Statistics show that seasonal farmworkers work an average of forty-two hours per week, but it is not clear whether this statistic accounts for the long periods of unemployment between particular crop seasons.⁹

In other words, seasonal and migrant farmworkers are employed when, and if, the crops and growers need them; yet, those needs are largely unpredictable. Because so many crops only require brief periods of labor, many or most seasonal farmworkers work for several employers in several locations throughout the course of a year.¹⁰ Workers often find it necessary to travel away from their homes to remain employed because work can be sparse, low-paying, or unpredictable.¹¹ In between each of these periods of employment,

temporary nature, and who is required to be absent overnight from his permanent place of residence).

⁶ Moretti, *supra* note 1, at 53.

⁷ JOYCE VIALET, IMMIGRATION: THE “H-2A” TEMPORARY AGRICULTURAL WORKER PROGRAM, CRS REPORT FOR CONGRESS 2 (1998) (quoting REPORT OF THE COMMISSION ON AGRICULTURAL WORKERS 1 (1992)), available at <http://www.policyarchive.org/handle/10207/bitstreams/441.pdf>.

⁸ AGUIRRE INTERNATIONAL, CALIFORNIA FARM LABOR FORCE: OVERVIEW AND TRENDS FROM THE NATIONAL AGRICULTURAL WORKERS SURVEY 6 (2005), available at <http://agcenter.ucdavis.edu/AgDoc/CalifFarmLaborForceNAWS.pdf>.

⁹ U.S. DEP’T OF LABOR, FINDINGS FROM THE NATIONAL AGRICULTURAL WORKERS SURVEY 2001-2002, at 36 (2005), available at http://www.doleta.gov/agworker/report9/naws_rpt9.pdf.

¹⁰ KENDEL, *supra* note 3, at 17.

¹¹ Thirty-two percent of farmworkers nationwide live at or below the federal poverty line, despite and even when they are working full time. See Aguirre, *supra* note 8, at 47. Average incomes for individual farmworkers range from \$10,000 to \$20,000 per year; families average slightly higher, from \$15,000 to \$17,500 per year. *Id.* Nationwide, the average wage for hired seasonal farmworkers is only \$8.00 per hour—equivalent to California’s minimum wage. KENDEL, *supra* note 3, at 20. The mean average weekly take-home for a farmworker is a mere \$340. *Id.* at 23. The Department of Labor reports the median personal income for a farmworker annually is between \$5,000 and \$7,000, with nearly one-third reporting less than \$2,500. UNITED STATES DEP’T OF LABOR, NATIONAL AGRICULTURAL WORKERS SURVEY (January 11, 2010), <http://www.doleta.gov/agworker/report/ch3.cfm>.

of course, are regular and unpredictable periods of unemployment—an issue to which we will dedicate the rest of this article.

Farmworkers experience unemployment at a much higher rate than any other industry due primarily to the seasonal nature of their work. Indeed, around 10 percent of farmworkers are estimated to be unemployed at any given time, compared to 4.5 percent for all other occupations.¹² Studies show that farmworkers report having worked, on average, between twenty and thirty-nine weeks in the previous year; this leaves the obvious negative: thirty-six to seventeen weeks of unemployment per year.¹³ Other statistics report that seasonal farmworkers experience approximately seventy days of unemployment per year.¹⁴ This number is significantly lower (29 percent lower) for permanent farmworkers.¹⁵

Due to legal and other barriers to unemployment benefits for farmworkers, little more than 50 percent of America's farmworkers access unemployment benefits.¹⁶ What follows addresses the barriers that result from laws reducing unemployment benefit eligibility for large portions of the farmworker population, based on where they work and for whom they work, as well as other immigration related limitations. Even where the law permits access to employment benefits and farmworkers are otherwise eligible, they frequently encounter delays or denials resulting from benefit agency mistakes, employer income-reporting violations, language barriers, and more.

III. FARMWORKERS AND THE UNEMPLOYMENT INSURANCE BENEFITS PROGRAM

The Unemployment Insurance Benefit Program was designed to provide replacement wages to workers who have lost their job through no fault of their own.¹⁷ The program is part of a joint federal-state program authorized by the Social Security Act, the Federal Unemployment Tax Act, and the California Unemployment

¹² KENDEL, *supra* note 3, at 19.

¹³ *Id.* at 26.

¹⁴ Moretti, *supra* note 1, at 47.

¹⁵ *Id.*

¹⁶ KENDEL, *supra* note 3, at 38.

¹⁷ *Cal. Dep't of Human Resources Dev. v. Java*, 402 U.S. 121, 125 (1971); CAL. UNEMP. INS.CODE § 100 (Deering 2011).

Insurance Code.¹⁸ Benefits are paid from an Unemployment Fund regulated by the State of California.¹⁹ Funds are collected from covered employers through a tax and then credited to the account associated with the employer called the employer's "reserve account."²⁰ The amount an employer pays in taxes in a given year is based in part on the amount of unemployment benefits charged to their account for benefits paid to employees in the previous year.²¹

In addition to providing replacement wages to workers unemployed through no fault of their own, the program has a second goal of returning money into the economy during periods of high unemployment. The United States Supreme Court case *California Human Resources v. Java* described this purpose.²² The decision explains that payment of unemployment insurance benefits "prevent[s] a decline in the purchasing power of the unemployed, which in turn serves to aid industries producing goods and services."²³

For farmworkers, California's unemployment insurance program is critical. Unemployment insurance benefits can represent the sole source of income for seasonal farmworkers during periods of unemployment.²⁴ During periods of the year where the climate

¹⁸ Social Security Act Title III, 42 U.S.C. §§ 501-503 (2010) (setting forth conditions for federal grants to states for unemployment compensation administration), Federal Unemployment Tax Act, 26 U.S.C. §§ 3301-3306 (2010) (setting forth unemployment tax rate assessed to each employer, designating the Unemployment Trust Fund as the repository of employer contributions, and authorizing states to collect and distribute employer contributions pursuant to approval by Secretary of Labor of state unemployment laws), CAL. UNEMP. INS. CODE § 101 (Deering 2011) (summarizing state unemployment program as part of a national plan to stabilize employment conditions).

¹⁹ Federal Unemployment Tax Act, 26 U.S.C. § 3306(e)-(f) (2010), CAL. UNEMP. INS. CODE § 301(c) (Deering 2011) (designating the Employment Development Department to collect employer contributions and maintain the Unemployment Trust Fund).

²⁰ CAL. UNEMP. INS. CODE §§ 1025-32 (Deering 2011).

²¹ *Id.*; see also *Cal. Dep't Human Resources Dev. v. Java*, 402 U.S. 121 at 126 (1971).

²² *Cal. Dep't Human Resources Dev. v. Java*, 402 U.S. 121 at 126 (1971).

²³ *Id.*

²⁴ See ALICIA BUGARIN & ELIAS S. LOPEZ, PH.D., CAL. RES. BUREAU, FARMWORKERS IN CALIFORNIA, CRB-98-007, 16 (July 1998), available at

dictates that there is no work, the replacement wages are used by claimants to feed their families, pay the rent and bills, and provide the basic necessities of life.²⁵ The system also promotes stability during times of unemployment in seasonal industries such as agriculture and construction by providing a bridge that makes it possible for skilled workers to stay in seasonal industries rather than shifting to other, year-round employment. Farmworker advocates' experiences²⁶ confirm that agriculture, in particular, rehires the same workers year after year who are able to develop skills and return to the same employers because they can collect unemployment benefits during a temporary layoff. The purposes of providing these replacement wages—injecting money into the economy and stabilizing the agricultural workforce—are only fulfilled if the unemployment insurance benefits are paid as required by law, and if the program is made accessible to farmworkers.

A. Delays in Farmworkers' Receipt of Unemployment Insurance Benefits

Delays are also evident in the administration of appeals of unemployment insurance benefits determinations. A claimant who applies for unemployment insurance benefits is sent an initial determination of their qualification for benefits, or lack thereof, and the projected amount of their weekly benefit check, if any.²⁷ If the claimant does not agree with that determination, she or he has a right to appeal the decision to the California Unemployment Insurance Appeals Board.²⁸ The Supreme Court of the United States has stated that the requirement that benefits be provided “when due” dictates

www.library.ca.gov/crb/98/07/98007a.pdf (describing the impact of inclement weather and the piece-rate wage system on farmworkers' income).

²⁵ *Id.* at 23-26 (describing farmworkers' disproportionate lack of accessible, adequate housing and health care services, such that all income goes to meet these basic needs).

²⁶ Farmworker advocates' experiences referenced in this article indicate patterns and trends derived from the authors' work with farmworkers and the decades of experiences of the more than 100 additional CRLA staff members around California, as well as other farmworker advocates in California and other states.

²⁷ CAL. UNEMP. INS. CODE §§ 1328, 1329 (Deering 2011).

²⁸ CAL. UNEMP. INS. CODE § 1328 (Deering 2011).

that hearings must be held as soon as administratively feasible.²⁹ Federal regulations require that 60 percent of all first-level benefit appeal decisions be processed within thirty days of the claimant's appeal, and 80 percent within forty-five days of the appeal.³⁰ In the year 2010, the California Unemployment Insurance Appeals Board (CUIAB) processed an average of 2 percent of cases within thirty days and 12 percent of cases within forty-five days.³¹ The statistics maintained by the federal Department of Labor demonstrate that the CUIAB has been out of compliance with this regulation since 2001.³² This failure results in additional benefit delays for claimants who may be entitled to benefits and who have already had to wait significant periods of time because their application was initially denied.

B. The Effect of Claimants' Chronic Unemployment on Future Applications

Whether a claimant qualifies for unemployment insurance benefits, as well as their weekly benefit amount, is dependent on the claimant's earnings during a specific twelve-month period preceding the application for benefits.³³ This period, called the "base period," is split into quarters.³⁴ The wages earned in these quarters are used to process the application and calculate the weekly benefit amount.³⁵ A claimant in California must have earned at least \$1,300 in the highest grossing quarter or, alternatively, at least \$900 in the highest grossing quarter and 1.25 times that amount (no less than \$1,125) over the entire base period.³⁶ A claimant who is disqualified for lack

²⁹ *Cal. Dep't Human Resources Dev. v. Java*, 402 U.S. 121 at 131 (1971).

³⁰ 20 C.F.R. § 650.4(b) (2010).

³¹ CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD, SUMMARY REPORT OF ACTING EXECUTIVE DIRECTOR AND CHIEF ADMINISTRATIVE LAW JUDGE ALBERTO ROLDAN, 2 (Jan. 10, 2011), available at http://www.cuiab.ca.gov/agendas/attachments_011111.pdf.

³² UNITED STATES DEPARTMENT OF LABOR, BENEFITS: TIMELINESS AND QUALITY REPORTS, LOWER AUTHORITY APPEALS TIME LAPSE REPORT FOR 1/01/2010 THROUGH 12/31/2010 FOR THE STATE OF CALIFORNIA, <http://workforcesecurity.doleta.gov/unemploy/btq.asp>.

³³ CAL. UNEMP. INS. CODE § 1275 (Deering 2011).

³⁴ *Id.*

³⁵ *Id.*

³⁶ CAL. UNEMP. INS. CODE § 1281 (Deering 2011).

of sufficient work in the base year finds himself in a quandary—chronically unemployed *and* unable to qualify for unemployment benefits.

Thus, periods of high unemployment decrease annual earnings *and* increase the risk that a farmworker who is already earning less than the federal poverty level will not qualify for unemployment later in the year.

C. Language Barriers

Language barriers represent an additional obstacle for farmworkers applying for unemployment insurance benefits. Nationwide, 78 percent of farmworkers were born in a country other than the United States, and 81 percent speak Spanish as their first language.³⁷ These numbers are higher in California, where 95 percent of farmworkers were born in another country.³⁸

Claimants primarily access California's unemployment insurance benefits program through a telephone claims processing system, paper notices sent to the claimants, or where possible, over the internet.³⁹ The Employment Development Department does not staff representatives at local offices to assist claimants with their initial application, or with specific questions regarding a possible delay in their claim.⁴⁰

This system presents obstacles for farmworkers trying to access the program whose primary language is not English, even though the Employment Development Department staffs a specific telephone

³⁷ U.S. DEPT. OF LABOR, *supra* note 10, at 3, 17.

³⁸ AGUIRRE INTERNATIONAL, *supra* note 9, at 10.

³⁹ CAL. CODE REGS. tit. 22, § 1326-1, CALIFORNIA EMPLOYMENT DEVELOPMENT DEPARTMENT, FILING A CLAIM, http://www.edd.ca.gov/Unemployment/Filing_a_Claim.htm (last visited July 1, 2011) (explaining the primary methods of filing a claim).

⁴⁰ See CALIFORNIA EMPLOYMENT DEVELOPMENT DEPARTMENT, FAQ – CONTACTING UI, http://www.edd.ca.gov/Unemployment/FAQ_-_Contacting_UI.htm (last visited July 1, 2011) (claimants referred to “Contact UI/EDD page”); see also CALIFORNIA EMPLOYMENT DEVELOPMENT DEPARTMENT, CONTACT UI, http://www.edd.ca.gov/Unemployment/Contact_UI.htm (last visited July 1, 2011) (claimants can contact the Department via e-mail, phone, or mail, but no information for local offices available).

line for Spanish-speaking claimants.⁴¹ Farmworker advocates' experiences consistently confirm that farmworkers report waiting on the line to speak to Department representatives for extreme and punishingly long periods of times, often hours upon hours. Claimants must tackle these barriers and find a way to navigate the system before their questions are answered, and sometimes in order to file an initial application.

IV. OTHER BARRIERS TO UNEMPLOYMENT BENEFITS FOR FARMWORKERS

In addition to those significant barriers already discussed, farmworkers also suffer other, often unique, delays and barriers throughout the unemployment benefits process. For example, Latin American immigrant farmworkers may experience delays due to the unemployment insurance programs' identity verification system. Latin American immigrants and even Latino Americans, including citizens, often use both their maternal and paternal surnames.⁴² Even minor inconsistencies in the identity information provided to the Employment Development Department by the employer or the claimant can result in the claimant having to provide further identification verification to the Department in order to qualify for benefits.⁴³ Farmworker advocates consistently report that claimants are frequently unable to secure additional documentation of their proper identities, or cannot do so in a timely manner without advocate assistance. For many farmworkers and others, the identity problem arises every time that they apply for benefits, resulting in chronic delays. Of course, this issue is particularly impactful for seasonal farmworkers, who must apply for benefits several times each year.

Immigration status is another barrier preventing or delaying farmworker access to unemployment benefits. In order to receive unemployment insurance benefits, a claimant must be authorized to

⁴¹ CALIFORNIA EMPLOYMENT DEVELOPMENT DEPARTMENT, TELEPHONE NUMBERS, http://www.edd.ca.gov/Unemployment/Telephone_Numbers.htm (last visited July 1, 2011).

⁴² COMMUNITY CARE OF NORTH CAROLINA, UNDERSTANDING LATINO NAMES, *available at* www.ccwjc.com/Forms/Latino%20Health/Latino%20Names.pdf (last visited July 1, 2011).

⁴³ CAL. CODE REGS. tit. 22, § 1326-3.

work legally in the United States.⁴⁴ The authors conclude from their exhaustive review of available statistics that federal assessments of the legal status of farmworkers vary wildly and are largely unreliable due to the countless factors, primarily related to workers' and employers' fear of retribution, that make an accurate count difficult. One report estimates that 53 percent of farmworkers nationwide are undocumented.⁴⁵ The number reported for California is slightly higher, at 57 percent.⁴⁶ Studies have repeatedly shown that recent hires are much more likely to be undocumented.⁴⁷ The U. S. Department of Agriculture estimates that in 2001, fully 98 percent of recently hired farmworkers were undocumented.⁴⁸ These workers are disqualified from receipt of benefits even if they meet all other eligibility requirements in the code.

In addition to problems posed by name, language, and immigrant status, farmworkers, like other low-wage workers, face obstacles imposed by malevolent or negligent employers. Chief among these obstacles is the under-reporting of wages earned during the base period, which may substantially reduce the amount of benefits for which the worker qualifies. In many cases workers are purposefully misclassified by employers altogether as independent contractors who are not eligible for unemployment benefits, and for whom no wages are reported by the employer at all.⁴⁹ This exclusion due to misclassification impacts not only the benefits of the individual worker, but also means that the employer avoids paying

⁴⁴ CAL. UNEMP. INS. CODE § 1253 (West 2011) (current with urgency legislation through Ch. 28 of 2011 Reg. Sess. & Ch. 2 of 2011-2012 1st Ex. Sess.; chapters enacted between October 20, 2009, and November 2, 2010, are subject to repeal by Proposition 22).

⁴⁵ U.S. DEPT. OF LABOR, *supra* note 10 at 6.

⁴⁶ Aguirre International, *supra* note 9 at 15.

⁴⁷ RICHARD DANIEL CARROLL, RUTH M. SAMARDICK, SCOTT BERNARD, SUSAN GABBARD, & TRISH HERNANDEZ, A DEMOGRAPHIC AND EMPLOYMENT PROFILE OF UNITED STATES FARM WORKERS: FINDINGS FROM THE NATIONAL AGRICULTURAL WORKERS SURVEY (NAWS) 2001-2002, at 6 (2005), *available at* http://www.doleta.gov/agworker/report9/naws_rpt9.pdf.

⁴⁸ KENDEL, *supra* note 3, at 12.

⁴⁹ BÁRBARA J. ROBLES, STRENGTHENING SOCIAL SECURITY FOR FARM WORKERS: THE FRAGILE RETIREMENT PROSPECTS FOR HISPANIC FARM WORKER FAMILIES 13 (2009), *available at* http://www.nasi.org/usr_doc/Barbara_Robles_January_2009_Rockefeller.pdf.

the unemployment tax he should pay for these workers.⁵⁰ Like any insurance program, the solvency of the unemployment insurance trust fund depends on full payment by employers for all covered workers, irrespective of whether they claim or receive benefits. When employers underreport or misclassify, purposefully or not, the integrity of the fund is impacted, contributing to fund insolvency problems faced by many states.⁵¹

V. EMPLOYED FARMWORKERS AND THE PRESSURE OF HIGH UNEMPLOYMENT RATES

Sustained high unemployment hurts those farmworkers who *are* employed by increasing job competition and decreasing job quality. Drastic increases in unemployment strengthen employers' power to place stringent production demands on farmworkers, who are forced to satisfy those demands or face replacement by the thousands of unemployed farmworkers waiting desperately for the opportunity to work. High rates of unemployment in construction and other sectors only exacerbate the problem as these workers seek or return to relatively less desirable agricultural employment. Unconscionable and unattainable production requirements—or “quotas”—flourish in this environment, increasing substantially the level of production required of farmworkers.⁵² Workers under these quota systems work

⁵⁰ *Id.*

⁵¹ See LEGISLATIVE ANALYST'S OFFICE, CALIFORNIA'S OTHER BUDGET DEFICIT: THE UNEMPLOYMENT INSURANCE FUND INSOLVENCY (2010), available at http://www.lao.ca.gov/reports/2010/ssrv/unemp_ins/ui_102010.aspx (detailing California's Unemployment Trust Fund's insolvency); see also Emanuella Grinberg, Some State Employment Funds Drying Up, CNN, Oct. 8, 2008, available at http://articles.cnn.com/2008-10-08/us/jobless.claims_1_unemployment-rate-trust-fund-national-employment-law-project?_s=PM:US (detailing the inadequacy of unemployment trust reserves in California, Michigan, Missouri, New York, Ohio, South Carolina, Wisconsin, Indiana, Kentucky and Arkansas).

⁵² See GREGORIO BILLIKOPF, DESIGNING AN EFFECTIVE PIECE RATE (2008), available at <http://www.cnr.berkeley.edu/ucce50/ag-labor/7research/7calag06.htm>. Billikopf's section on “Eliminating Piece Rates” explains the potential for abuse by employers. “Two different types of games are played here. One of them consists of eliminating the piece rate when employees are ‘earning too much money,’ and while paying people an hourly wage expecting them to have a minimum work quota, ‘now that we know how much they can produce.’” *Id.*

on an hourly basis but are required to complete a particular number of work tasks in a particular amount of time in order to avoid termination.⁵³ For example, grape workers may be required to prune a certain number of vines in a particular day; bell pepper workers may be required to pick a particular number of buckets; onion workers may be required to complete a particular number of sacks—and the payment for completion of those tasks remains constant at the pre-determined hourly wage. The consequence for not meeting those standards is simply termination.

Those requirements in turn contribute to increased workplace injuries, as workers desperately increase the speed of their physical tasks in an effort to meet the quota.⁵⁴ For example, grape and onion workers suffer more frequent cuts to their hands from the uncontrollable speed of their scissors; bell pepper workers may suffer heat stress or increased back pain from the increased speed of their bending, stooping, and running to dump their buckets.

Quota requirements also cause workers to skip their meal and rest periods.⁵⁵ Given the extreme pressure to produce in particular quantities, workers frequently or almost always forego their rest breaks and meal periods even where they are permitted to take

⁵³ Unreasonable production quotas were a United Farm Workers focal point in the 1980s and 1990s, and their newsletters give some of the most chilling examples of production quotas and their impact on workers. See United Farm Workers, *Targeting Carrilla: Lawsuits Expose Unsanitary, Slave-Like Conditions in California Grape Fields*, FOOD AND JUSTICE, Jan. 1990, 6-8, available at www.farmworkermovement.org/ufwarchives/.../39_Jan90_001.pdf. Production quotas still proliferate for both piece-rate and hourly wage farmworkers. See Susan Ferriss, *In California's fields, risks rise with the temperature*, SACRAMENTO BEE, Aug. 21, 2008, at A1; see also Stephen Franklin, *The Speed-Up In The Fields*, In These Times, July 29, 2010, http://www.inthesetimes.com/working/entry/6270/the_speed-up_in_the_fields/. Alternatively, employers adjust the piece rate so quickly that workers' productivity increases but their wages diminish, never approaching minimum wage. See MICHIGAN CIVIL RIGHTS COMMISSION, A REPORT ON THE CONDITIONS OF MIGRANT AND SEASONAL FARMWORKERS IN MICHIGAN 35 (2010), available at http://www.michigan.gov/documents/mdcr/MSFW-Report3222010_315419_7.pdf.

⁵⁴ See Ferriss, *supra* note 65; see also MICHIGAN CIVIL RIGHTS COMMISSION, *supra* note 65, at 43.

⁵⁵ See Ferriss, *supra* note 65; see also MICHIGAN CIVIL RIGHTS COMMISSION, *supra* note 65, at 36-37.

them⁵⁶ in order to avoid potential termination.⁵⁷ As a result of the lack of rest and meal periods, workers are substantially more susceptible to a wide array of workplace injuries and illnesses, including increased stress to the body, increased fatigue resulting in collateral injuries such as cuts to the hands, bladder and urinary infections, heat stress, illness, death, and many more.⁵⁸ Workers who are too heavily fatigued or injured to reach the quotas face summary termination and are likely to be replaced by another vulnerable worker. The cycle thus continues.

Moreover, quota systems contribute to increased explicit *and* implicit discrimination in the workplace. Quotas requiring exceptionally high physical strain are frequently out of grasp for women workers or older workers, causing employers to either explicitly decline to hire individuals from these groups or to terminate them more often due to their inability to reach the quota.⁵⁹ Farmworker advocates report that quotas requiring intricacy or speed-of-hand labor are frequently out of grasp for men, causing the same effect for those workers. Farmworker advocates also report that recently arrived and often young, undocumented workers are more willing to undertake the extreme strain of unconscionably strenuous quota requirements than their documented and/or older counterparts. This scenario frequently results in the same effect for documented and/or older workers who, without the protection of a union, are unlikely or unable to assert their rights to reasonable pace in the workplace and therefore risk facing unemployment.

Thus, high unemployment not only impacts those workers who are unemployed. It also creates extreme pressures on the workers

⁵⁶ Farmworker employers (as well as other employers) frequently do not permit adequate rest breaks or meal periods to their employees, despite the legal requirement to do so by the Industrial Welfare Commission, Order No. 14 (2001). 8 CAL. CODE REGS. tit. 8, § 11140 (2011); CAL. LAB. CODE § 226.7 (Deering 2011). Whether or not Employers are required to “provide” the breaks forcibly or simply “authorize” the breaks is an issue before the Supreme Court in the case *Brinker Restaurant Corp., Inc. v. Superior Court of the County of San Diego et al.*, San Diego County Superior Court case number GIC834348.

⁵⁷ See Ferriss, *supra* note 65.

⁵⁸ MICHIGAN CIVIL RIGHTS COMMISSION, *supra* note 65, at 42-43.

⁵⁹ Leah Beth Ward, *Desperate Harvest: N.C. Growers' Trade in Foreign Farm Workers Draws Scrutiny*, CHARLOTTE OBSERVER, Oct. 31, 1999, at A1.

who *are* fortunate enough to find work. As farmworkers and advocates agree, high unemployment leads to production pressure that frequently damages worker health and quality of life, results in termination, or both. The result is a class of workers who find themselves unemployed for having been unable to achieve unconscionably high work requirements; at the same time, they are probably without access to unemployment benefits due to having been terminated, rather than laid off. Put another way, high unemployment gets them fired—then prevents them from collecting unemployment benefits.

VI. CONCLUSION

Farmworkers' regular unemployment has always existed. This article has attempted to show that during periods of high unemployment nationwide, farmworkers experience a disproportionate share of the burden. Farmworkers rely on and should be entitled to unemployment benefits to minimize the impact of the seasonal nature of their work. Limited, foreclosed, or delayed access to those benefits is an issue that has worsened over time and that advocates have begun to address through litigation and other organized action. The impact of high unemployment rates on farmworkers is an issue that ebbs and flows alongside changes in the availability of work. Together, these scenarios combine to create a system in which unemployment is just one among many injustices farmworkers face. Without systemic solutions, farmworkers remain a special category of Americans who live their lives without equal access to unemployment benefits or equal protection of the law.