

# **Training/Retraining Programs between Business and Local Government**

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# Legal Question

If businesses and local governments work together to build and conduct training/retraining programs to match unemployed workers to real employer needs, what basic employment law(s) apply to trainees and which do not?

# Answer and Recommendation

- **Answer:**
  - Federal Unemployment Tax Act (FUTA)
  - Unemployment Insurance
  - Americans with Disabilities Act of 1990 (ADA)
  - Fair Labor Standards Act (FLSA), Fair Minimum Wage Act of 2007 , California Labor Code Section 1171-1205
- Trainees not subject to minimum wage laws. There needs to be more protection for workers to make sure that they are getting fair training.
- **Recommendation:**
  - Short-term actions - a county-sponsored employment training program, training for pre-screened workers
  - Long-term policies- extending employee protections to trainees.
  - Funding by states' employer contributions
  - Facilities provided by private companies
  - Personnel - recruitment of new employees, training for existing staff

# Background

- Unemployment- individuals without jobs and are seeking a job.
- Macroeconomic Implications:
  - Reduction in output, tax revenue
  - Rise in government expenditure
- Types of unemployment: cyclical, seasonal, frictional, and structural
- A fragmented system
- Colleges and employers- separate agendas, poor communication
- Cooperation with government will benefit businesses' bottom line.
- Need job-training programs that specifically address employment needs.

# Federal Unemployment Tax Act (FUTA)

- **Identification and definition:**
  - United States federal law, a federal employer tax to help fund state workforce agencies.
  - Unemployment compensation to workers who have lost their jobs.
- **Elements and sub-elements:**
  - 6.2% tax, composed of permanent rate of 6.0% and temporary rate of 0.2%, on first \$7,000 of gross earnings
- **Defenses and exceptions on certain jobs**
- **Wimberly v. Labor and Industrial Relations Commission of Missouri**
- **Social values**
  - No protection for trainees and interns
  - More outflow than inflow of cash

# Unemployment Insurance

- **Identification and definition:**
  - Federal-state program, federal law but executed through state
  - Purpose- provide partial wage replacement to unemployed workers while they search for new work
- **Elements and sub-elements:**
  - Financed by employer tax contributions
  - California Employment Development Department (EDD)
- **Defenses and exceptions:** Fraud and misrepresentation
- United States of America v. Danielle Facchini, et al.
- Pacific Legal Foundation v. Unemployment Insurance Appeals Board
- Gus Swaby v. Unemployment Insurance Appeals Board
- **Social values for public policy:**
  - Created in response to the Great Depression
  - Goal- help businesses, communities, and the nation's economy

# Americans with Disabilities Act of 1990 (ADA)

- **Identification and definition:**
  - Civil rights law that prohibits, under certain circumstances, discrimination based on disability
  - “A physical or mental impairment that substantially limits a major life activity”
- **Elements and sub-elements:**
  - Title I
- **Defenses and exceptions:**
  - Undue hardship
  - Cannot perform the essential functions of the job
  - Direct threat
- *EEOC v. McKinney Griff, Inc. dba Merritt Restaurant and Bakery*
- **Social values for public policy:**
  - Fear and discrimination based on stereotypes and naïve prejudice

# Fair Labor Standards Act (FLSA)

- **Identification and definition:**
  - Minimum wage law prohibits employers from hiring employees or workers for less than a given hourly, daily or monthly minimum wage
- **Elements and sub-elements:**
  - Fair Minimum Wage Act of 2007
  - California Labor Code Section 1171-1205
  - Internship Six-Part Test- U.S. Department of Labor
- **Defenses and exceptions**
- *State Labor Comm'r v. Ziprealty Inc.*
- **Social values for public policy:**
  - Laws most beneficial to the employee
  - Intern -not the employer- should be the primary beneficiary



# Recommended Program

- **Short-term actions:**

- Limit unemployment monetary aid.
- Yearly minimum of three new strategic federal, state and or local partnerships.
- At least three automated systems that maximize staff productivity and customer self-help.
- Determine customer overlaps across programs and define customer needs.
- Review progress and institute an on-going evaluation process by 2015.

- **Long-term practices/policies:**

- Workforce development activities
- Seamless access to EDD automated services through any public system by 2020.
- Improve access to employment and training programs.
- Detection of internal and external fraud across all programs by 2020.

# Recommended Program

- **Personnel:**
  - Target agencies such as Employment Development Department (EDD) and the State of California Labor & Workforce Development Agency (LWDA)
  - Build human resource capacity to meet changing environment.
  - Recruit new generation of employees, opportunities and training for existing staff.
  - Attract diverse, qualified staff and leaders by 2014.
  - Encourage continued education and institute evaluation and future planning process.
- **Funding:**
  - States' employer contributions
  - FUTA
  - Unemployment Trust Funds
- **Facilities:**
  - Private companies

# Recommended Program

- **Utility:** Benefits and burdens
- **Rights/Duties:** Rights to be free from deprivation, exploitation, unnecessary burden
- **Justice:** Even distribution of benefits and burdens
- **Care:** Respect and trust among stakeholders
- **Organization Mission:**
  - Work with businesses as partners in building a world-class workforce system
  - Help individuals attain self-sufficiency
  - Contribute to economic prosperity
  - Ensure integrity
- **Personal principle:** Human dignity for all

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