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Briefly Noted: Labor Market Attachment and the Avoidable Consequences Rule

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BRIEFLY NOTED

Labor Market Attachment and the Avoidable
Consequences Rule, by Thomas L. Gravelle,
59 University of Detroit Journal of Urban
Law 569 (Summer, 1982).

Readers are commended to this thoughtful article by Thomas L. Gravelle, a former member of the Michigan Employment Security Board of Review. Written for the University of Detroit's Symposium "Long Lines and Hard Times: Future Unemployment Insurance Alternatives," the article is an innovative attempt to introduce the frequently introspective doctrines of unemployment compensation to the influence of other sources of law.

The discussion focuses on the unemployment insurance concept of "availability:" the requirement that a claimant for benefits be ready, willing and able to work. As shown by Mr. Gravelle's detailed synopsis, unemployment litigation has developed a substantial body of rules and evidentiary criteria for determining whether a claimant is "available" (for example, a claimant must be physically able to accept suitable employment, must register for work with an employment security agency, is usually required to conduct a realistic search for work in an appropriate labor market, etc.). Mr. Gravelle observes that many of these criteria, and much of the same evidence, is necessarily considered by labor arbitrators and other tribunals in "back pay" proceedings (that is, proceedings to determine whether a wrongfully discharged employee has mitigated his damages by seeking and accepting a suitable job). Using the few examples disclosed by careful research, the author illustrates the beneficial results which may be obtained when one of these discrete tribunals makes use of the experience and expertise of another. Indeed, the very comparison between unemployment compensation and "back pay" proceedings suggest a novel, theoretical approach to an old problem: the concept of "availability" as a duty to mitigate the damages of involuntary unemployment.

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