Chapter 2

Early intervention and prevention of job displacement in the United States

This chapter analyses the most important policy measures in the United States that take effect before workers are dismissed and aim to prevent excessive job displacements. This is done by looking at the role of employment protection legislation which determines the process through which employers can dismiss workers, short-time work and layoff aversion strategies. The chapter also looks into rapid response transition services aimed at connecting displaced workers to employment support to help them find new jobs quickly.

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Employers' labour requirements vary continually as sales fluctuate and production technologies and work practices evolve. Many of these changes can be accommodated through internal adjustments, rather than firing of existing and hiring of new workers. Employees may be retained during a business downturn by temporarily reducing their hours of work or being assigned to non-production activities (training or maintenance work). Even when a firm's labour requirements have permanently declined for a certain type of worker, it may be possible to retrain those workers and transfer them to other parts of the firm. However, not all jobs can or should be saved. Effective, timely, well-targeted adjustment assistance can assist workers whose dismissal cannot be avoided to get an early start at finding new jobs. Preventive and anticipatory adjustment support is attractive to the extent that it can reduce the incidence of displacement and its adverse consequences for workers without undermining the dynamic and the efficiency of the economy.

The degree of employment protection in the United States is one of the lowest in the OECD. This implies that labour adjustment primarily takes place by reducing the number of workers and, to a much lesser degree, the number of hours they work. The challenges for US policy therefore include: i) to ensure take-up of the short-time compensation in a timely and smooth manner; ii) to strengthen the advance notification requirements for dismissals in order to cover a larger population of displaced workers more systematically; and iii) to improve coverage and the effectiveness of Rapid Response Services (RRS).

Preventive measures to avoid unnecessary dismissals

Policies to reduce displacement-related costs by minimising the number of workers who are dismissed for economic reasons are a part of most countries' tool box. Employment protection legislation (EPL) – a set of rules governing the hiring and firing of workers – typically has been designed to both protect workers from unfair dismissals and increase job stability with the aim of shielding workers and society from the economic and non-economic costs associated with job displacement. While the costs of displacement can be high, a large body of research has shown that excessively strict or poorly designed EPL can greatly hamper the economy by discouraging job creation, lowering productivity, and strengthening labour market dualism (see Chapter 2 in OECD, 2013). Therefore, EPL should be used judiciously and effectively in combination with other measures to preserve economically viable jobs and, when jobs are no longer viable, accommodate as much labour reallocation as possible through internal reassignment of workers and transfers to other firms, to prevent job displacement.

Employment protection against individual dismissal is the least strict in the OECD

OECD indicators of EPL stringency indicate that employment protection for workers with *permanent* employment contracts (i.e. open-ended as opposed to temporary contracts) is the lowest in the United States, lower than it is for their peers in most other OECD countries. There are a number of factors that make EPL for regular US workers holding a permanent job particularly light (Table 2.1).

Table 2.1. **Labour law in the United States provides very little protection against individual dismissal**

Selected components of the EPL indicator for the United States, 2013 or latest year available

Regulation of	Score on a scale from 0 (least restrictive) to 6 (most restrictive)		The US' rank among 34 OECD countries
	OECD average	United States	(1 = Least strict)
Regular contracts	**2.0**		
Notification procedures	3.1	1.2	1
Delay involved before notice can start	1.3	0.0	1
Length of notice period at 9 months of tenure	2.7	0.0	1
Length of notice period at 4 years of tenure	2.6	0.0	1
Length of notice period at 20 years of tenure	1.6	0.0	1
Severance pay at 9 months of tenure	0.2	0.0	1
Severance pay at 4 years of tenure	1.6	0.0	1
Severance pay at 20 years of tenure	1.4	0.0	1
Definition of justified or unfair dismissal	1.8	0.0	1
Length of trial period	3.7	..	–
Compensation following unfair dismissal	1.8	..	–
Possibility of reinstatement following unfair dismissal	2.2	1.0	11
Maximum time to make a claim of unfair dismissal	2.2	4.0	28
Collective dismissals	**2.9**		
Definition of collective dismissal	4.4	1.5	3
Additional notification requirements for collective dismissals	3.8	6.0	25
Additional delays involved before notice can start for collective dismissals	1.8	4.0	30
Other special costs to employers of collective dismissals	1.5	0.0	1

Note: ..: Not available; –: Not applicable.

Source: OECD Employment Protection Database, 2013 update, http:dx.doi.org/10.1787/lfs-epl-data-en.

StatLink http://dx.doi.org/10.1787/888933427220

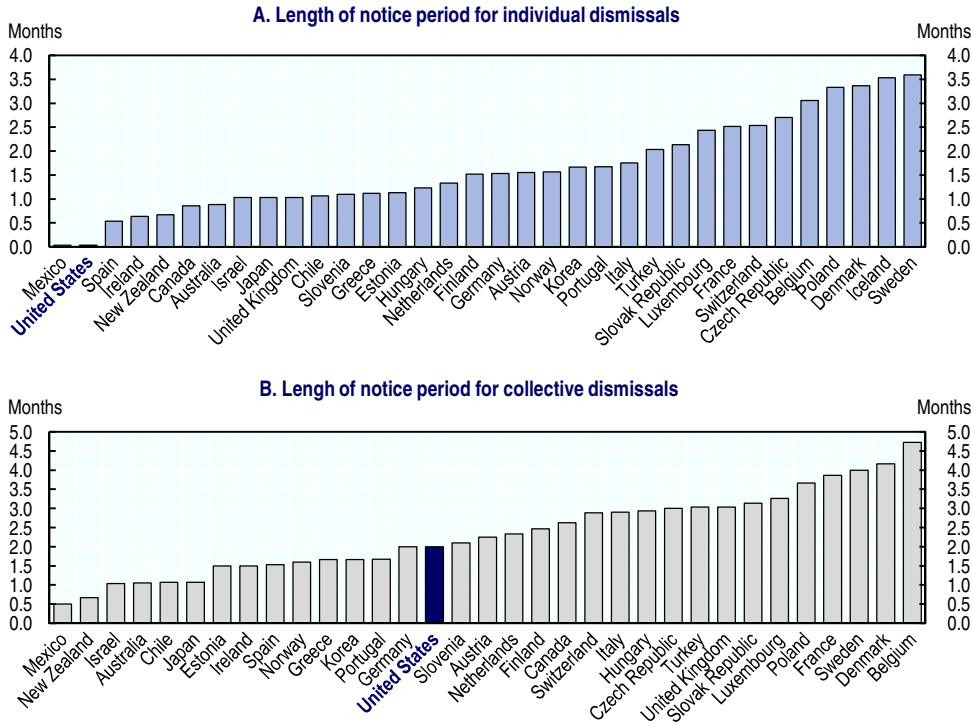
First, unlike any other OECD country except Mexico, the United States has no legislation in place to provide notice periods against individual dismissals (Figure 2.1, Panel A). *Second*, most US states have no specific notification requirement e.g. a written notice reporting the reasons for dismissal.[1] This is a striking contrast to regulations in other OECD countries which in some cases may require mandatory consultations with trade union representatives even if only one worker is to be made redundant (Sweden) or written notice with statement of reasons (e.g. Spain). *Third*, there are no provisions for employers to provide severance pay although they can be regulated in collective agreements or company policy manuals. *Finally*, the formal definition of fair redundancy is very lenient: with the exception of unionised workers or public sector workers, it is generally fair to terminate a work relationship without justification or explanation according to employment at-will principles. However, the increase in anti-discrimination laws and laws against unfair treatment in the workplace and their accompanying threat of lawsuits, have weakened somewhat the fire-at-will doctrine in the United States (Colvin, 2012).

Employment protection for workers laid-off collectively is much stricter. Notably, in such cases a notice period is prescribed and thus the difference in this indicator between individual and collective dismissal is larger in the United States than elsewhere (Table 2.1 and Figure 2.1). Under the federal *Worker Adjustment and Retraining Notification* (WARN) *Act*, employers with 100 or more employees must provide at least 60 days advance notice if they plan to lay off 50 or more workers, or more than one-third of the employer's workforce, whichever is greater. As in many other OECD countries, notification of mass dismissals to authorities providing employment services is mandatory. The WARN Act requires that notice be given to employees' representatives (i.e. a labour union where they exist), the local chief elected official (i.e. the mayor), and the state dislocated worker unit responsible for co-ordinating RRS to help workers transition to new jobs (see section below).

Even though notice periods are more generous for collective dismissals than for individual layoffs, the United States ranks low on a number of other components. For example, the definition of collective dismissals is the least strict: it requires that 100 or more full-time workers in a company are dismissed within one month – except in case of plant closure or workforce reduction larger than one-third of the workforce, in which case the threshold is lowered to 50 full-time workers. By way of example, collective dismissals are defined as at least 15 workers in Australia and 10 workers fired within a month in Norway. In addition, there are no legal requirements in the United States on severance pay unless laid down in collective agreements or company manuals; and no regulations on establishing social plans detailing measures of re-employment, retraining or outplacement services.

Figure 2.1. **The United States has no notice period in case of individual dismissal but a more standard two-month notice period for collective dismissals**

Legally mandated notice period for individual and collective dismissals in months, 2013 or latest year available



Source: OECD Employment Protection Database, 2013 update, http://dx.doi.org/10.1787/lfs-epl-data-en.

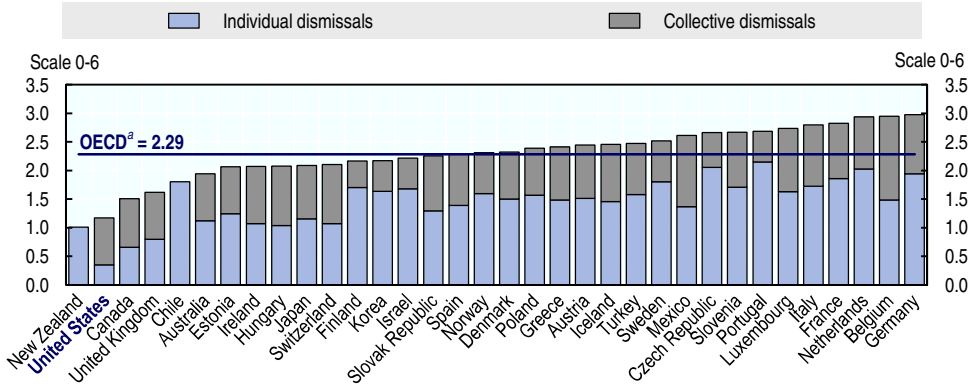
StatLink http://dx.doi.org/10.1787/888933427047

Overall EPL strictness for permanent workers in the United States, taking together regulations for individual dismissal and collective dismissal, is well below the OECD average and the lowest among English-speaking common-law countries like Canada, New Zealand and the United Kingdom (Figure 2.2). How do these rules impact worker's transition into the labour market?

Compared with most OECD countries, and consistent with its lenient level of EPL, the United States tends to have relatively high flows into unemployment and even higher flows out of unemployment. Unemployment inflows and outflows both tend to be lower in countries with strict EPL (Figure 2.3).

Figure 2.2. **Overall, protection against dismissal for permanent workers in the United States is the second-lowest in the OECD**

Employment protection legislation indicators for OECD countries, 2013 or latest year available



Note: The figure presents the contribution of different sub-components to the indicators for employment protection. The height of the bar represents the value of the indicator.

a) Unweighted average of the respective indicator shown in each panel for the 34 OECD countries.

Source: OECD Employment Protection Database, 2013, http:dx.doi.org/10.1787/lfs-epl-data-en.

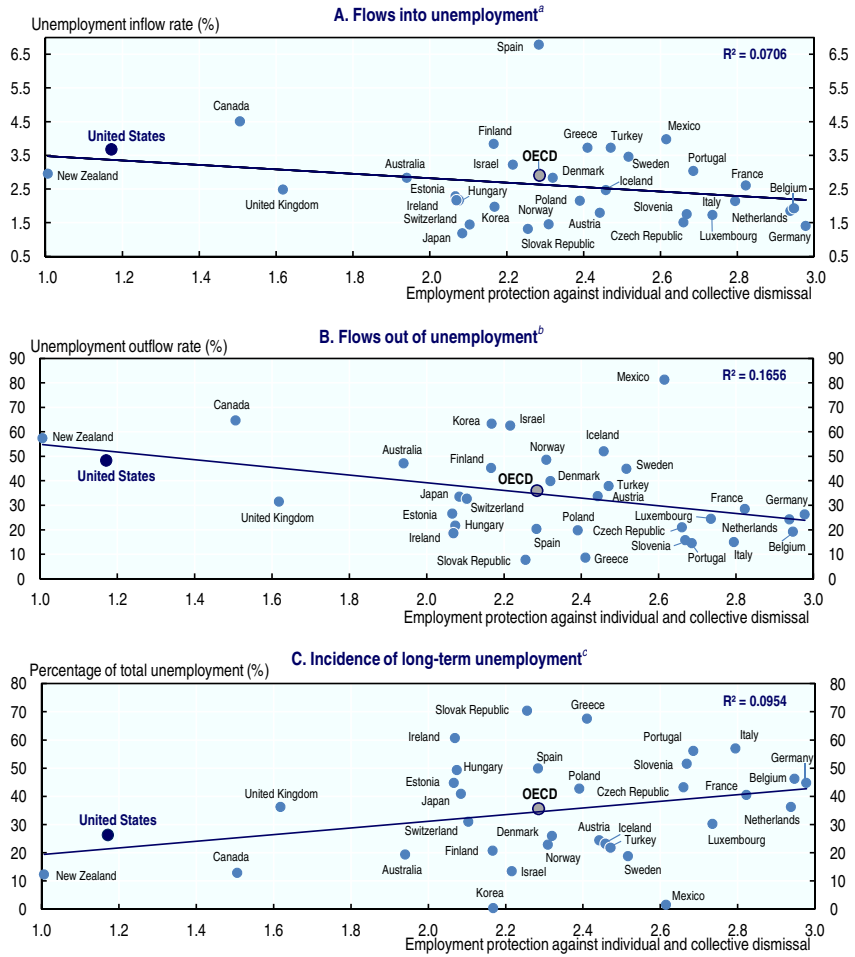
StatLink *http://dx.doi.org/10.1787/888933427051*

This is consistent with what the theory and empirical research suggests: strict EPL is likely to reduce the propensity for permanent workers to be displaced into unemployment, but at the same time tends to dampen hiring rates so that unemployed persons take longer to move back into jobs (OECD, 2013). While much less pronounced, there is a tendency for unemployment to be more persistent in the United States compared with many other OECD countries than would be predicted based on EPL strictness alone. For example, with a little over 20% recently the incidence of long-term unemployment is higher than that found in some of the Nordic countries even though they have a moderate to high level of EPL. This may be related to these countries' heavy reliance on active labour market policies that are likely to reduce the possible negative effect of EPL on outflows into employment.

In the context of lenient employment protection for workers in which workers can be hired and fired with relative ease, a number of other preventative measures such as short-time work programmes and early warning mechanisms can serve as important alternative policy tools to limit unnecessary job losses. These are assessed in the following.

Figure 2.3. **Relatively high flows *in* and *out* of unemployment result in a comparatively lower long-term unemployment incidence in the United States**

Labour market flows and the incidence of long-term unemployment, 2013



Note: EPL: Employment protection legislation.

a) The *unemployment inflow rate* is defined as the ratio of the number of unemployed who have been unemployed for less than one month to the number of employed one quarter earlier.

b) The *unemployment outflow rate* is defined as 1 *minus* the ratio of the number of people who were unemployed for more than a month to the total number of unemployed a quarter earlier.

c) Number of long-term unemployed (12 months or more) as a percentage of total unemployment.

Source: OECD calculations based on national labour force surveys; and *OECD Employment Protection Database*, 2013 update, http:dx.doi.org/10.1787/lfs-epl-data-en.

StatLink http://dx.doi.org/10.1787/888933427066

Short-time work is used relatively little in the United States

Short-time work (STW) programmes in general are an important tool in maintaining viable jobs at firms experiencing temporarily reduced demand. They function by encouraging work-sharing through the reduction of working hours, while also providing income support to workers whose hours are reduced due to a shortened work-week or temporary layoffs. STW programmes can lower the social costs of demand fluctuations by helping firms to avoid unnecessary layoffs, i.e. the permanent dismissal of workers during a business downturn whose jobs would have been viable in the longer run. Avoiding layoffs during temporary recessions has potential benefits for employers as well. Work-sharing may be a means of retaining valued employees and avoiding new recruitments when sales go up again. Workers who are laid-off may take jobs elsewhere, meaning that any investments the firm has made in these workers' job skills are lost. This may be an especially important consideration when workers are highly skilled and costly to replace when demand rebounds.

Short-time work is available only in some states and used infrequently

The *Short Time Compensation* (STC) programme in the United States, also known as work sharing, is administered at the state level. It was first instituted in California during the late 1970s while federal law was enacted many years later: a temporary national programme was established in 1982 and permanent changes to federal laws were made in 1992 allowing states to adopt STC programmes (Felter, 2012). Currently, 27 states operate a STC programme; although six of them only introduced such legislation during the GFC. Up until recently, states varied in their requirements but basic outlines of STC were similar among all states (Shelton, 2012). The Layoff Prevention Act passed in 2012, among other provisions triggered by the GFC, clarifies requirements related to STC. Under these new regulations, the term STC programme means a programme under which:

- The participation of an employer is voluntary.
- An employer reduces the number of hours worked by employees in lieu of layoffs.
- The reduction in hours is at least 10% but no more than 60%.
- The employer must have an approved STC plan in place with the appropriate state workforce agency.
- Employees receive an unemployment compensation that is a pro rata portion of the benefit otherwise payable if they were unemployed.

- Employees meet the availability for work and work search requirement by being available for their work weeks as required by the state agency.
- Employees may participate in a state-approved, employer-sponsored, or Workforce Investment Act funded training programme.
- Health and retirement benefits (defined-benefit or defined-contribution plans) must continue to be provided to STC participants under the same terms and conditions as for all other employees.

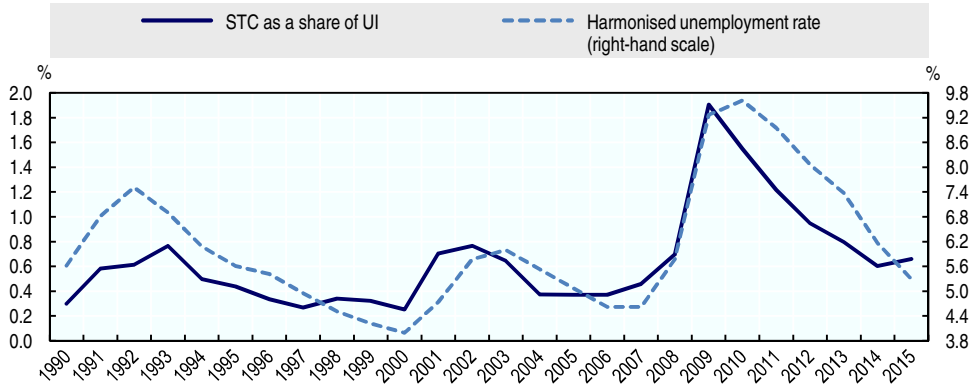
STC in the United States is funded just like regular Unemployment Insurance (UI): by UI state payroll taxes on employers which in turn are based upon an *experience rating* system paid out of state accounts in the *Unemployment Trust Fund* (see Chapter 3). Thus, the STC programmes follow the experience rating principle whereby employers pay more unemployment insurance taxes the more benefits are collected by laid-off employees.

Unlike many other OECD countries, where STW is a popular tool in minimising excessive job losses during temporary periods of low demand, their use in United States is rather limited. Between 1990 and 2015, the STC programme rarely reached 1% of unemployment claims paid annually across the United States except in periods of economic recessions, where this percentage peaked at nearly 1% in 1993 and up to 2% in the crisis year 2009 (Figure 2.4). These fluctuations in take-up also mean that, despite the low average use of STC, the programme has been responsive to the business cycle. In an international comparison, take-up of STC in the United States (measured as the average stock of participants over all employees) was amongst the lowest in the OECD, peaking at 0.22% of all employees in late 2009. Take-up in high-use countries like Japan, Germany, Italy and especially Belgium typically was around 3% to 5% of the workforce during the (peak of the) global financial crisis (GFC) (Hijzen and Venn, 2011).

Evidence from other OECD countries shows that such programmes can have an important impact on limiting job losses during periods of lower demand and economic downturns. The OECD (2010) has estimated the number of jobs that were preserved by STW schemes in the wake of the GFC in some 14 OECD countries, and concluded that deadweight and displacement effects were sufficiently small to allow significant numbers of permanent jobs to be saved. Hijzen and Martin (2012) extended this analysis to cover 23 countries and the recovery period through to late-2010 and reached the same qualitative conclusions. The *Kurzarbeit* programme in Germany is estimated to have preserved the greatest number of jobs during the crisis period.

Figure 2.4. **The size of the Short-Time Compensation programme in the United States is small but highly cyclical**

STC users in the United States as a share of all UI benefit recipients[a]



Note: STC: Short-Time Compensation; UI: Unemployment Insurance.

a) STC and Regular UI data refer to yearly data calculated as averages of weekly data.

Source: http://www.oui.doleta.gov/unemploy/index.asp, Table "Weeks Claimed in All Programs (Expanded)" for Short-Time Compensation and Regular UI data; and *OECD Short-term Labour Market Statistics Database*, www.oecd.org/statistics/ for harmonised unemployment rate.

StatLink http://dx.doi.org/10.1787/888933427076

Evaluations in the United States have demonstrated that STW also saved jobs, particularly in sectors such as manufacturing in which there was more use of work sharing. According to Abraham and Houseman (2013), the average full-time equivalent of persons on STC in 2009 represented less than 1% of average private sector employment declines from 2008 to 2009, but nearly 5% of the decline in manufacturing production jobs over the same period.[2] However, this estimate is based on translating the number of unworked hours that were compensated by unemployment insurance into worker equivalents and thus takes no account of possible deadweight and displacement effects (see more below).

Promoting short-time work is welcome but more can be done to increase take-up

Most US research on the weak implementation of the STC programme and its low take-up points to the ambiguity in the 1992 federal law that authorised STC programmes; employers' lack of awareness of STC; and the limited guidance and assistance provided to states by the Department of Labor (Ridley, 2009; and Shelton, 2012) – the latter in particular has changed

considerably with the new legislation 20 years later. In recognition of the large job losses during the crisis and potential benefits of STC programmes, the federal government provided greater incentives to states to implement and increase the use of STC. Apart from standardising the definition of STC, the Layoff Prevention Act of 2012 also included provision for i) temporary federal financing of STC; ii) grants to states for STC-related purposes; and iii) increased federal responsibilities for promoting STC. More specifically:

- States with programmes that meet the new federal definition of STC could receive 100% of benefit costs from federal funds for up to three years.
- States that introduced new STC programmes with appropriate provisions could have half their benefit costs financed by the federal partner for up to 30 months.
- States that have enacted conforming state STC laws could, until recently, apply for a portion of the USD 100 million in grants for programme improvement and outreach to employers.
- At the federal level, there will be increased support for promoting STC including additional guidance and technical assistance.

These improved steps are encouraging but further changes may be required to substantially improve the use of STC in future downturns. One remaining weakness of the current programme is that STC benefits are charged to employers' experience rating like regular UI benefits. This is likely to raise concerns on the cost of the programme among employers as they are required to pay charges – in comparison to other OECD countries – which can have a negative impact on their programme participation. Going forward, modifying the financing arrangements of STC benefits might have to be considered to encourage take up, especially if experience rating of employer contributions for the regular UI programme would be tightened, as proposed in Chapter 3 of this report. One option would be to exempt workers on STC from the experience-rating scheme. Doing so, however, it will be important to watch out on any misuse of the scheme as a first step before dismissal.

Another somewhat similar disincentive problem is that when claimants collect STC benefits, the payments count against their maximum potential UI benefit payment for the respective benefit year (i.e. the 12-month period for which current UI eligibility applies) in the same way as UI benefits for full weeks compensated, but at a lower weekly rate. Through this regulation, employee participation in STC is discouraged as they incur a reduction in the remaining maximum benefit amount balance even though they are employed. This is in contrast to many other OECD countries, in which if a spell on STC is followed by a layoff, the entitlement to UI benefits is not reduced by the prior receipt of STC.

Whilst employer costs and lowered UI duration can reduce the take-up of STC and its potential to preserve viable jobs, they also can serve as an effective way to limit possible deadweight and displacement costs. *Deadweight* occurs when STC subsidies are paid for jobs that employers would have retained in the absence of the subsidy, and *displacement* occurs when STW schemes preserve jobs that are not viable without the subsidy. A number of alternative options are adopted by other OECD countries to reduce these potential costs. Behavioural requirements for firms can include safeguards against dismissal during or also after participation in the scheme (e.g. in Austria, Hungary, the Netherlands, New Zealand and Poland) or the development of recovery plans (e.g. in Italy, Luxembourg, Poland and Spain and for white-collar workers in Belgium). Behavioural requirements for workers most frequently take the form of requiring them to engage in active job search during the period they are not working, particularly in countries where STW is a partial benefit administered by the UI system. During the recession in 2008-09, Hungary, the Czech Republic, the Netherlands and Portugal introduced a requirement that workers must participate in training during their idle hours. Several other countries provide subsidies for training during STW or reduce the cost to firms of taking part in STW if they provide training for workers on short-time schedules.

Finally, recent initiatives in the United States to encourage STC take-up should be evaluated systematically. For instance, variation across states in the treatment of employers who establish STC plans – in particular on whether those employers will be charged for the costs of STC benefits during the period when the federal government is reimbursing states for STC benefits paid – should provide valuable information about whether such subsidisation can increase the use among employers. Research also will be needed to understand the extent to which STC programmes in the United States actually mitigate job losses and moderate the impact of recessions on businesses, workers, and communities.[3]

Early warning mechanisms are well-developed but operate on a small scale and have a limited scope

Layoff aversion strategies are an integral part of the policy package in the United States to prevent or minimise job loss for employees of firms that have announced layoffs, or are struggling with necessary structural adjustments. *Layoff aversion* programmes primarily focus on identifying businesses at risk of closing or necessitating larger layoffs for factors such as production quality problems, management instability, or declining sales. They aim at addressing these risk factors before they become acute to increase available options and the likelihood of successfully averting layoffs. There are a wide variety of approaches and strategies available to

address the risk factors such as retraining of existing workers, increasing efficiency and productivity or adopting new technologies and process improvements.

At the federal level, one of the main programmes – the *Manufacturing Extension Partnerships* (MEP) available since 1988 – has a prime focus on layoff aversions in the manufacturing sector. It is administered by the National Institute of Standards and Technology and aims to help small and medium-sized manufacturing firms to operate more productively and competitively.[4] Even though they do not necessarily avoid layoffs, MEP assistance for manufacturing firms can have an indirect impact on increasing employment security at those firms. The MEP centres receive one-third of their operating expenses from federal funds. Centres are expected to match those funds with funding from other sources, notably fees for services to clients and funding from state governments. The total MEP budget is about USD 300 million.

Similarly, in Pennsylvania, the *Strategic Early Warning Network* (SEWN) organised in 1993 by the Steel Valley Authority assists manufacturing companies experiencing problems before they reach crisis stage. The programme has become a pioneer throughout the state to promote timely investment in job retention and business development by companies which show early signs of trouble. SEWN includes a network of local business, government, and labour that monitors businesses and tries to intervene early enough to prevent layoffs or workplace closings. The Pennsylvania Department of Labor and Industry can also refer a company to SEWN for layoff aversion services upon receiving a WARN notice.

Both MEP and SEWN can be critical in view of the relatively minimal notice period in the United States which in addition only applies to a small number of cases and may often come too late (see section below). However, rigorous evaluations of these layoff aversions programmes on their impact on job savings are missing. According to the MEP survey among national clients, almost 18 000 new jobs were created and about 46 000 jobs were retained in 2014 (NIST, 2014). On the other hand, a study by the National Research Council (2013) concludes that the effect of the MEP on job creation and retention is inconclusive. This is because MEP seeks to enhance productivity but efficiency measures may eliminate some factory worker positions. Similarly, based on a number of client surveys, the Steel Valley Authority Annual report documents that in 2014, SEWN averted just over 1 000 job losses, with a cost per-job-saved of USD 1 018. Moreover, these programmes do not have an explicit mandate to save jobs and they also ignore dismissals taking place in other industries (except of the manufacturing sector).

In Michigan, layoff aversion extends to a number of different industries and focuses on helping workers directly who are at risk of being dismissed. The Michigan Department of Labor and Economic Growth has used Workforce Investment Act dislocated worker funds for *Incumbent Worker Training* (IWT) which is designed to ensure that employees of a company are able to gain the skills necessary to retain employment or avert a layoff, and must increase both the participant's and a company's competitiveness. It is offered to firms that are at-risk of downsizing or closing and identified as having at least one *risk indicator* such as declining sales, supply chain issues or change in management philosophy or ownership. IWT is restricted to skill attainment activities to i) increase skills in an occupation in which the individual is an incumbent, and ii) prepare for entry into a new occupation within a targeted workforce (i.e. the workforce of the participating employer or a group of employers). A major strength of the IWT is that it is part of a demand-driven strategy and thus can be tailored to emerging skills and occupations in specific industry clusters. There are currently five industry clusters in Michigan – advanced manufacturing, construction trades, health care, avionics and leisure/hospitality and retail – that are given a priority and act as a driving force for workforce development activities in the state.

Even though layoff aversion programmes have numerous advantages, preventing job losses is likely to be difficult, especially in the absence of employer co-operation. In a recent survey, 36 US states indicated that they try to avert layoffs, but about two-thirds of that group reported that such efforts were rarely or never successful (Salzman et al., 2012). The low success rate was attributed by some practitioners to the lack of sufficient time to produce any change in company decisions or plans. By the time the state's rapid response teams (see more on them below) receive notification of a closure or layoff, critical firm decisions have already been made and employers are not or no longer able to consider alternatives.

In view of the difficulties of *saving* jobs in firms, one option would be to further expand the role of SEWN and MEP to the benefit of worker more directly by enhancing labour mobility between declining and growing firms and activities within the manufacturing sector (and within other sectors, as appropriate). Ideas on how to do this can be taken from Japan, where the Industrial Employment Stabilization Center (IESC) has been set-up to facilitate mobility of labour between industries and companies (Box 2.1). While the establishment of the IESC partly reflects the life-time employment philosophy in Japan, several of the ideas can be replicated, including the sharing of information across firms about forthcoming layoffs and recruitments. Both SEWN and MEP are long-running programmes with strong relations with employer's and ability to generate timely information about impending layoffs which can provide a good basis for the extension of

their activities. If successful, the programmes should be carefully evaluated and could be expanded to other sectors in the economy.

Box 2.1. **Innovative employer involvement to facilitate mobility of labour between industries and companies: The case of Japan**

The *Industrial Employment Stabilization Center* (IESC) was originally established in 1987 with contributions from 13 business groups (primarily in manufacturing) and a subsidy from the national government, with the purpose to facilitate the mobility of labour between industries and companies. The IESC does this by operating as an intermediary that facilitates good matches between sending and receiving firms; that is, between companies with regular workers they no longer need and companies wishing to recruit mid-career regular workers with appropriate skills and aptitudes.

When an IESC agent has identified a potentially good match, the sending and receiving firms are informed. If both firms agree that a transfer would be mutually advantageous, then they negotiate the terms of the transfer, which can be either temporary or permanent.

There is one IESC office in each of the 47 prefectures and this network continues to be funded by a combination of government funds and industry contributions. The majority of the staff in these offices consists of human resource specialists from large firms, who are temporally seconded to the IESC. To facilitate the transfer of workers from downsizing to recruiting firms, the IESC gathers information about firms that are planning to displace workers and those that are recruiting workers. Information on job vacancies and jobseekers are shared between the 47 prefectural offices in order to provide greater scope for job matching. Typically, agents at the IESC both collect information on vacancies to add to the vacancy database and provide job-search assistance to displaced workers, including by proposing them as a candidate for specific vacancies.

Source: OECD (2015), *Back to Work: Japan – Improving the Re-employment Prospects of Displaced Workers*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264227200-en.

Early re-employment support to help dismissed workers find new jobs

The role of early intervention, transition or rapid response services, which includes job-search assistance and career counselling, becomes critical in a context where the dominant form of downward employment adjustment is layoffs into unemployment. While there is a strong rationale for intervening as soon as workers are given advance notice, there are also likely to be costs that need to be factored into the choice for an early intervention approach. For instance, providing intensive support to workers who are temporarily laid-off can be costly as some of them revert back to their previous jobs or these workers may find other jobs in any case without any intervention. In what follows, examples of adjustment support from two US states, Pennsylvania and Michigan, are discussed in some detail.

Connecting workers to employment support as soon as workers are laid-off is given a high priority

Although some worker dislocations are preventable, many layoffs occur as a result of a rapidly transforming economy. In the United States, mass layoffs and workplace closings trigger a mandated response involving state and local workforce agencies. Up to 25% of a state's dislocated workers' programme budget is dedicated for the *Rapid Response Service* (RRS) in the national workforce system. States also can expand the budget in a flexible manner; usually over three years – the year of allotment plus two subsequent years, as with other funding streams under the *Workforce Investment and Opportunity Act* (WIOA). That is, states can carry over unspent WIOA money like for RRS from one year to the next. The dedicated funding stream for RRS reflects the view that early intervention can be effective.

While the RRS is federally mandated, the scope of activities provided under this programme, as well as the range of services offered to affected workers following RRS involvement, varies among states and even within states although a number of similarities exist. In general, both Michigan and Pennsylvania follow a similar process in dealing with mass layoffs. Common features in the way rapid response is carried out include the following:

- ***Phase 1 – Notification of dismissals and fact-finding***: The rapid response process typically begins as soon as the authorities receive a notification of an impending mass layoff or facility closure either through a formal WARN notice, or other sources such as a phone call, newspaper article and public announcements by employers. Upon receiving the notice, RRS staff verifies the layoff through contact with employer representatives (where they exist). Contact is then made with the employer and the available worker representatives, to market RRS activities, gather essential facts and establish a date for a RRS planning meeting. Both states endeavour to hold an on-site visit to the business preferably within 48 hours.

- ***Phase 2 – Rapid response planning****:* An on-site planning meeting is held with the employer and labour representatives. The main objectives are to determine the cause, size and timing of dislocation and to make a preliminary assessment of resource availability and staff capacity and of the services needed by the workers and those offered by the employer. A standard dislocated worker survey has been developed in both states designed to collect information on each worker's employment and educational history, employment goals, and service needs which is also distributed to workers during the planning phase.

- ***Phase 3 – Worker orientation meeting***: The worker information meetings are scheduled, ideally on site and during company hours, to provide an overview of available dislocated worker services such as Unemployment Insurance entitlements; links to employment services (offered by PA Career Link sites in Pennsylvania and Michigan Works offices); early information about what to expect emotionally and financially from being laid off; advise on coping with job loss; and availability of credit counselling. Multiple sessions can be held over the course of a day in order to accommodate all work shifts.

In Pennsylvania, the Department of Labor and Industry has developed a comprehensive guide for workers – *Surviving a Layoff* – summarising the types of jobs available in the labour market, training needed to obtain employment, information on jobs paying similar wages and on where to look for jobs in industries that are hiring. In Michigan, the state-wide Dislocated Worker survey tool related to economic dislocations, particularly plant closings and mass layoffs, is worth noting. The tool is a good example of collecting information on dislocated workers in a uniform way which allows for the aggregation and analysis of data, comparisons by dislocation, and examination of trends by region and/or industry. This information also feeds into designing tailored solutions and preparing intervention in a systematic and efficient manner.[5]

WIOA recommends establishing Labor Management Committees in the case of layoffs involving 50 or more workers and if there is at least 60 days subsequent to the rapid response meeting before layoffs are completed. Michigan and Pennsylvania have adopted different terminologies but operate in a similar way and share the same objective. In Michigan, a *Joint Adjustment Committee* (JAC) is formed for co-ordination of delivery of services while in Pennsylvania a *Dislocated Worker Transition Team* (DWTT) is deployed when dealing with mass layoffs. JACs and DWTTs are typically comprised of equal numbers of management, labour representatives and affected employees and chaired by a neutral third party.

Unlike rapid response teams, JAC and DWTT serve as an *advocate* for the entire affected workforce to ensure access to services and reduce the impact of the dislocation. There are several advantages of the joint committee approach over the regular RRS such as the continuous contact with affected employees, more employer involvement and the on-site delivery of employment services. Moreover, a self-help or *peer-counselling* approach is a key element in the planning of transition activities which can be effective in promoting worker's morale and reducing negative effects (e.g. on workers' health) caused by downsizing.

In practice, however, Labor Management Committees are rarely formed; e.g. in Michigan, the JAC is established in less than 5% of all cases. This is partly related to the relatively short notice period as well as non-compliance with the WARN Act (see below). Lack of employer co-operation is another factor. Too often, companies prefer not to incur the extra staff costs of providing time off for participation in these activities. In Pennsylvania, DWTT activities are supported financially by the Department's Bureau of Workforce Development Partnership and Operations, which can provide USD 1 500 to reimburse team expenses. The company and/or union are asked to either match this amount or contribute corresponding in-kind resources. Providing employer incentives to co-operate goes in the right direction but the amounts involved are likely to be too small to have an adequate effect.

Other OECD countries have adopted a much stricter approach. For example, the province of Quebec, in Canada, uses a reclassification assistance committee (*Comité d'aide au reclassement* – CAR) which has a role quite similar to that of Labor Management Committees. Employers in Quebec by law have to contribute 50% of the cost of the CAR activities or offer at least equivalent outplacement services to the affected workers directly if they choose to opt out. A CAR consultant is hired to develop a *reclassification plan* for each displaced worker which can include a combination of tailored services to help each worker find a job as quickly as possible. CAR activities can last up to two years. Displaced workers still requiring assistance when CAR services expire are referred to *Emploi-Québec*, the province's regular employment service (OECD, 2015b).

Too short advance notice and poor enforcement undermines early intervention

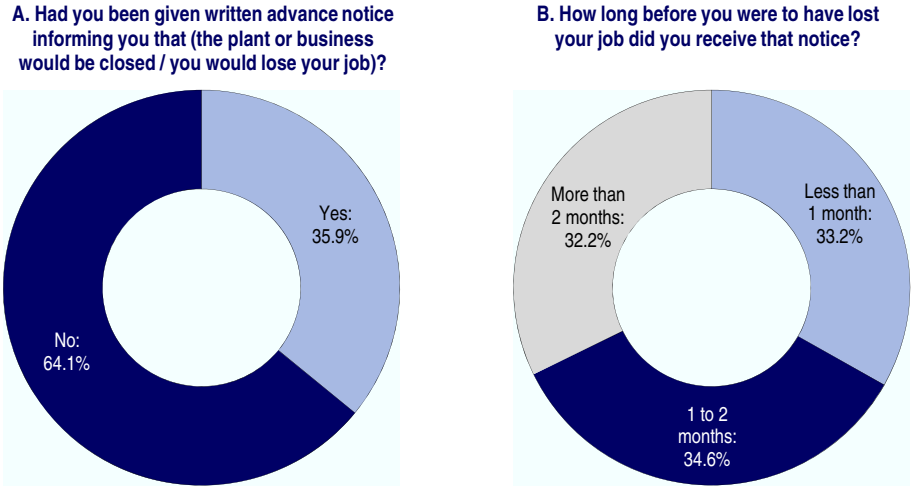
Labour adjustment programmes in the United States face a number of challenges to be fully effective. Both Michigan and Pennsylvania authorities highlight that early re-employment of workers before or just after a layoff was often beyond reach. Lacking or incomplete advance notices, the desire of employers to retain workers right up to the dislocation date, and employer disinterest more generally were commonly cited as major obstacles to early re-employment efforts.

Findings from the Displaced Workers Survey (DWS) confirm these views. Almost two-thirds of all workers displaced during 2000-14 report they received no advance warning of job loss (Figure 2.5, Panel A).[6] The large share of displaced workers without any advance notice can be attributed to a number of factors including no requirements on employers to provide advance notice in case of individual dismissals; the fact that the

WARN Act only applies to firms with 100 or more full-time employees; and generally a high degree of non-compliance. The Current Population Survey (CPS) dataset provides no information on the size of firm therefore it is difficult to assess the degree to which employers comply with the WARN legislation. An earlier study by the Government Accountability Office found that employers provided notification to workers in only about one-third of the situations that appeared to warrant WARN notices (GAO, 2003).

Figure 2.5. **Advance notice is rare in the United States and often very short**

Share of displaced workers who received an advance notice, by duration of the notice period, average over the period 2000-14



Source: OECD calculations based on the US Census Bureau for the Bureau of Labor Statistics (BLS), Current Population Survey (CPS), Displaced Worker, Employee Tenure, and Occupational Mobility Supplement, January/February various issues.

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Among workers who received a notice, one-third was notified only one month prior to displacement, one-third received a notice of no more than two months, and another third reported to have been warned more than two months before their dismissal (Figure 2.5, Panel B). The latter may reflect more generous notice periods provided under collective bargaining agreements.

These findings suggest that too many displaced workers miss out on the benefits associated with advance notice including the opportunity to have a head start in searching for a new job. Research in the United States has shown that displaced workers receiving advance notice spend less time

unemployed than workers laid-off without any advance warning (Nord and Ting, 1991 and 1992; and Swaim and Podgursky, 1990). There is also some indication of a positive effect on post-displacement wages for workers who have received notice (Rhum, 1994).[7]

The WARN notice has been rather ineffective in facilitating additional proactive measures such as rapid response due to non-compliance. Estimates from other studies show that only between 5% and 33% of rapid responses nationwide (varying across states) are triggered by WARN notices, thus in most cases providing state governments with little information about impending dislocations and too little time to plan and develop any adjustment assistance (Heidkamp and Kauder, 2008). WARN notices account for about 10% of all RRS interventions in Pennsylvania and only around 6% in Michigan.

Several steps can be taken to facilitate a smoother operation of labour adjustment programmes and to make them more effective for displaced workers. In recognition of the challenges outlined above and dissatisfaction with the federal WARN Act, a growing number of states – including New York, California, Illinois and New Jersey – have adopted their own WARN legislation which imposes a much stricter law on employers compared with the federal WARN Act. For example, legislation in New York state requires a 90-day notice from the employer and applies to companies with 50 or more employees (unlike 100 for the federal law) where either 25 (50 for the federal law) or more workers are affected, if that number makes up at least 33% of the workers on that site. A state WARN Act can help to integrate federal legislation into state layoff aversion and rapid response actions. In order to close the gap in legislation between states and to fully exploit the merits of early intervention services, a comprehensive reform to the federal WARN Act should be considered including i) lowering the number of workers that must be subject to layoff for notification to be required; ii) extending the notice requirements to firms with fewer than 100 employees; and iii) increasing the length of advance notice requirements. Such change would allow a more effective rapid response.

Changes in the federal WARN Act should go hand-in-hand with stronger enforcement. Employers who violate the legislation are in principle liable for back pay and associated costs (e.g. the cost of medical expenses that would have been covered had the employment loss not occurred) to each aggrieved employee. The penalty is calculated for each working day that notice was not provided up to a maximum of 60 days.[8] However, the US Department of Labor does not have any investigative or enforcement authority under the law. Instead, workers who do not receive the legally mandated notification are forced to sue their former employers in federal courts which can be a long and cumbersome process and the likelihood of bringing employers to the

lawsuit is very low. Thus, in practice the WARN Act has no *stick* for employers not abiding to the law. Since the WARN Act does not require firms to notify the federal government prior to layoffs or plant closings, there is also no central data on notifications. Systematically collected information by the states could provide for better enforcement by the state authority to assess penalties against employers who fail to comply with the act's notification requirement. This would create a greater incentive for employers to provide the required notification than currently exists under the federal legislation. Otherwise, the development of a central databank can also be considered if uniform legislation was put in place.

To ensure employer co-operation and provision of effective employment support, some OECD countries have shifted considerable responsibilities on employers by making them pay, either fully or partially, for outplacement services for a specified period at least in the case of mass dismissals. In Canada, in the federal jurisdiction and in three provinces, employers are compelled to contribute 50% of the adjustment programme in dismissals of 50 or more workers. The most extreme example is Sweden where employers entirely fund (through 0.3% of their payroll) activities of so-called *Job Security Councils* which run parallel to public employment services and provide tailored job-to-job transition services and guidance to displaced workers for up to two years.

Japan as another example provides a good illustration of a non-financial strategy: employers dismissing 30 or more workers within a month have to prepare a *Plan for Assisting Re-employment* and submit it to the chief of the Public Employment Security Office one month prior to the first dismissal. The requirement to prepare such a plan is a useful way to encourage employers to be proactive about organising adjustment assistance for their workers. Works councils or employee representatives also are partners in facilitating transition services especially in many European countries. But this is rarely the case in the United States where union membership in the private sector is only 7% (11% if the public sector was included). Overall, even if putting financial burden or other responsibilities for outplacement services on employers could be unpopular among employers, it is likely to prove more effective because enforcement of sanctions is problematic as it is difficult to determine the cause of non-compliance with the WARN Act.

Rapid response covers only a small number of displaced workers

An additional challenge is to expand employment services such as rapid response to all displaced workers. As illustrated above, a large share of displaced workers do not have any rights and if they do, they do not necessarily receive any advance notice; most displaced workers in the United States therefore are unlikely to receive immediate support to help

them transition into new jobs. In addition, while many states will in principle provide RRS for layoffs of all sizes, some states restrict RRS to layoffs of 50 or more workers, or layoffs for which they received a WARN notice. In both Michigan and Pennsylvania, the state departments of labor intend to provide effective services to as many workers and companies as possible, irrespective of the number of workers affected and at any time as soon as the authorities hear about a company in difficulties. Even these efforts, however, are unlikely to cover small-scale or individual dismissals all together.

These gaps in the United States in the coverage of displaced workers by support programmes is most problematic for workers with poor re-employment potential, notably older and low-skilled displaced workers. Research in Canada and the United States shows that long-tenured and older displaced workers, especially those who acquired most of their vocational skills on the job, can often have a hard adjustment, in terms of finding new employment and earning sufficient wages; see for example Finnie and Gray (2011) for Canada; and Root and Park (2003) and Couch and Placzek (2007) for the United States. These workers generally lack recent work experience and realism about labour market search for a new position, have difficulty in communicating their skills to potential new employers, and are often demoralised or excessively optimistic about their re-employment options. These difficulties represent an efficiency loss for the overall economy, as well as a source of hardship for the individuals affected and their families.

Lack of early intervention during or right after the dismissal is of particular concern in the United States given that requirements to engage in active labour market programmes are weak in the current landscape. For instance, unlike in many other OECD countries there is no federal legislation mandating unemployed workers to register with the employment services in order to receive unemployment benefits. Some US states including Michigan and Pennsylvania have a provision that requires workers to register, however, the fact that employment support and job-search monitoring are under separate institutions render the strict implementation of these rules difficult. Even if a displaced worker seeks employment support or job-search counselling, evidence suggests that such support is likely to be limited as employment services remain heavily under-funded (see Chapter 4).

In order to minimise the unemployment duration and facilitate early contact with employment services, several countries have resorted to extending obligations to workers dismissed. For example, in Switzerland, as part of the required job-search efforts, unemployed workers need to give proof of job-search activities between dismissal notification and the first interview at the public employment service to receive unemployment benefits (Duell et al., 2010). A similar preventative approach was adopted in Germany as part of the Hartz reforms, where workers are obliged to register as jobseekers three months before their job ends or, for those with

shorter notice, within three days after receiving notice of dismissal (Mosley, 2010). This registration obligation allows the employment service to make referrals to vacancies already before the first unemployment benefit payment. However, such policies can only be implemented successfully in the United States should the advance notice legislation be made more comprehensive and extended to all dislocated workers.

Again, increasing obligations should and must come with better provision of employment support for all workers. Support schemes aimed at individual or small-scale dismissals exist in several OECD countries, notably Canada (Quebec) and Sweden, where tailored assistance is available to all dislocated permanent workers (Box 2.2). These approaches could potentially also be considered in the United States.

Box 2.2. **Schemes to reach out quickly in case of individual dismissals: The examples of Sweden and Quebec**

The *Job Security Councils* in Sweden

In Sweden, once a permanent employee has been notified of dismissal, both the employee and the employer apply for services to the *Job Security Council* (JSC), a body managed by the social partners in a given sector or occupational field (e.g. white-collar workers in the private sector) and financed through employer contributions. The JSC provides transition services such as individual counselling, career planning, job-search assistance and outplacement services. The JSC's activities are funded through employer contributions (fixed percentage of their total payroll). The JSC operates as a form of insurance distributing the risk and costs of restructuring among its members which allows access to services also for workers in small and medium-sized enterprises. JSCs overall achieve very high placement rates, exemplifying the advantages of a systematic early intervention approach. On average, 80%-90% of dismissed workers find a new job within 7-8 months, often without using any public employment service

The *Continuous-Entry Reclassification Assistance Committees* in Quebec

In Quebec, workers affected by individual or small-scale dismissals can enrol in *Comités d'aide au reclassement à entrées continues* (CREC). CRECs meet the needs of regions: i) facing multiple redundancies in small and medium-sized firms (therefore not reaching the 50-displaced workers threshold to qualify as a mass dismissal); and/or ii) that do not have enough public employment services staff to cope with the sudden influx of displaced workers in a local employment centre. To ensure sufficient capacity is available, *Emploi-Québec*, the regular public employment service, outsources these CREC outplacement services to specialised external providers.

Source: OECD (2015), *Back to Work: Canada – Improving the Re-employment Prospects of Displaced Workers*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264233454-en; and OECD (2015), *Back to Work: Sweden – Improving the Re-employment Prospects of Displaced Workers*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264246812-en.

Conclusions

In comparison with other OECD countries, employment protection for workers in the United States is weak. Employers face no requirements to provide advance notice against individual dismissals; there is no requirement to consult with unions before dismissals take place; nor is there any provision to provide severance payments. Regulations in the case of mass dismissals are relatively stricter but remain rather lenient compared with other OECD countries. This implies that labour adjustment in the United States primarily takes place by reducing the number of people in work. Overall, the lax legislation has fostered significant labour market flexibility allowing workers to move from one job to another with relative ease and minimising long-term unemployment for many decades. However, the hike in unemployment duration following the GFC is likely to put this soft model under strain, with the many unemployed still struggling to find new jobs.

In the absence of strong employment protection rules, schemes which aim to prevent unnecessary job losses and connect laid-off workers to employment services immediately become critical in order to mitigate the adverse effects associated with displacement. Rapid response services, layoff aversion schemes and recently also short-time work programmes are given high priority in the United States at the federal and the state level. Even then, a number of challenges remain to exploit the potential of these programmes and to make them more effective.

Currently, around half of the US states use a short time compensation programme to prevent layoffs. In most cases, however, this programme had not been available at the peak of the GFC and take-up has been low. New legislation introduced in 2012 to consolidate the definition of short-time work and to provide greater incentives for employers to increase its use is welcome. These changes should be complemented with further reforms including modifying the financing arrangement of short-time work; providing the adequate incentives to employees to enrol in the programme; and tapping into further research opportunities provided by the new legislation to refine the design of the programme.

Layoff aversion programmes are widespread in the United States but fail to help as many workers as they could, for a variety of reasons. *First*, layoff aversion can only be effective if firms at risk seek help before it is too late. *Second*, the narrow focus in most states on just the manufacturing sector limits the impact. Broader schemes like the industry cluster approach in Michigan or schemes that include all sectors of the economy should be tested. *Third*, the focus of layoff aversion could be expanded beyond strategic and management issues and include direct support for workers at risk of being laid-off, by promoting labour mobility and job-to-job transitions. Before expanding layoff aversion programmes, however, rigorous evaluations should be performed to assure that they are cost effective.

In the United States, advance notice in the case of mass dismissals is usually followed by states' rapid response activities to facilitate workers' transitions to new jobs. However, rapid response can only be effective if employers co-operate in facilitating quick job-to-job transitions for the affected workers. Evidence suggests that too few workers receive advance notice and only a handful of services are triggered off by such notices, thus undermining efforts to reach out to workers as quickly as possible. While workers affected by mass dismissals typically may benefit from a rapid response intervention, most displaced workers will not and will instead have to rely on re-employment support through core active labour market programmes in their local area. A comprehensive reform to the WARN Act would be desirable in order to better engage workers in the rapid response process and to fill the big gap in prompt service provision to workers affected by small-scale and individual dismissals.

More generally, strategies should be tested on how best to reach employers because the success of any prevention and early intervention measure hinges on strong employer co-operation. This requires the right mix of positive and negative incentives. Much can be learned from other countries on how to reach out to all displaced workers, not only those in collective dismissals; how to use a (longer) notice period wisely and effectively; and how best to involve employers through a good mix of supports and responsibilities and the right degree of co-payment to any prevention and early intervention action.

Notes

1. In some states eligible workers, regardless of whether or not the worker is under an employment contract, may obtain a *service letter* that indicates the reason for the dismissal. In other states where there is no service letter concept, the workers can request the reason for termination.

2. The authors also conclude that had usage in all states been as large as in Rhode Island, the state with the highest work sharing rates, the average number of FTE workers on work sharing in 2009 would have been approximately ten times as large as the number actually observed—in the vicinity of 220 000 FTEs rather than 22 000 FTEs. And had the average take-up rate been similar to that in Germany or Italy in 2009, the average number of FTE workers on work sharing would have approached one million. In other words, with work-sharing usage at European levels and assuming that work-sharing expansions translate directly into reductions in the number of layoffs, as many as one in eight of the roughly 8 million jobs lost during the recession could have been saved (Abraham and Houseman, 2013).

3. US Department of Labor currently has two studies underway to further their understanding of STC. Preliminary findings of a survey of employers in four states identified barriers to STC of unawareness and insufficient information on costs of the programme. A random-response demonstration project in Iowa and Oregon is testing different STC approaches to improve take-up. Final results will inform policy making.

4. Small and medium-sized firms represent 98% of all manufacturing enterprises in the United States. They account for two-thirds of all manufacturing employment and employ nearly 11.3 million people (National Research Council, 2013).

5. The Dislocated Worker Survey in Michigan is a serial-numbered, bar-coded form handled by the One Stop Management Information System section. This ensures the data collected can be aggregated by particular dislocation, and is both valid and reliable. Data are submitted to the Labour Market Information section which produces i) a labour characteristics map illustrating where workers affected by the employment dislocation live; ii) worker demographics; iii) a list of available skilled labour by occupation and company; and iv) career pathway(s) for employees' skill sets for in-demand occupations within the region. This information can readily be used by staff in the local Michigan Works agencies.

6. While there are small differences by age, workers with post-secondary education are more likely to receive notice than their counterparts with lower qualifications. It is plausible that the latter are likely to be employed by larger employers who tend to provide more notice of impeding job loss to workers as they have better resources to anticipate and manage workforce reductions.

7. Some studies have also found slightly negative effects of advance notices on wages in the new job, but these can be partly explained by the very short notice period which does not allow adequate implementation of job-search support and thus hampers any positive effects associated with advance notice.

8. Maximum liability may be less than 60 days for those employees who had worked for the employer for fewer than 120 days. In addition to payments to workers, employers found to be in violation of the WARN Act may also be subject to a USD 500 civil fine for each day fewer than 60 that they provided notice to affected employees. An employer can avoid the civil penalty entirely if each aggrieved employee is paid the full amount for which the employer is liable within three weeks from the date of the plant closing or mass layoff.

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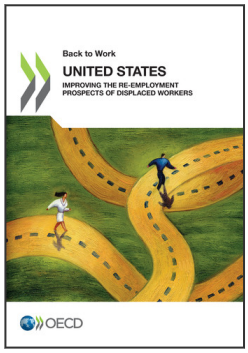

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