Legal Assistance for Unemployment Benefit Claims in the United States

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Sector(s): Political Economy and Governance

Location: Massachusetts, United States of America

Sample: 207 unemployment benefits claim cases

Outcome of interest: Employment Social service delivery

Intervention type: Coaching and mentoring

AEA RCT registration number: AEARCTR-0001677

Partner organization(s): Harvard Legal Aid Bureau (HLAB), Massachusetts Department of Unemployment Assistance (DUA)

Legal assistance programs provide free or low-cost legal representation to clients who could not afford the services otherwise. Researchers conducted a randomized evaluation to determine the effects of an offer of legal services on the outcomes of unemployment claims appeals. The offer did not increase a claimant's chances of winning their case and increased the length of the adjudication process by 16 days on average. The results suggest that client outreach and intake systems, as well as the methods an adjudicatory system uses to generate information it needs to resolve disputes, may be key determinants of the impact of legal assistance.

Policy issue

Demand for legal services often exceeds supply in the United States. While individuals are constitutionally guaranteed an attorney in criminal cases regardless of ability to pay, this is not the case for civil litigation. Civil law includes important areas like housing, family law, immigration, bankruptcy, and unemployment benefits claims, all of which can have large and lasting consequences for individuals. Legal assistance programs provide free or low-cost legal representation to clients who could not afford services otherwise. Most previous research has analyzed the effects of legal representation by comparing success rates of claimants with representation to those without representation, but these studies are unable to separate the causal effects of representation from the other factors that influence the outcome of a case. The likelihood that a case will win may also influence an attorney's choice to represent a client in the first place. In this study, researchers conducted a randomized evaluation to determine the effects of an offer of legal services on the outcomes of unemployment claims appeals. Randomized evaluations have rarely been used to measure the impact of various legal services. They could help providers improve the effectiveness of their services, identify which types of clients benefit most, and focus efforts in contexts where the help will be most effective.

Context of the evaluation

Unemployment insurance uses state and federal payroll taxes to assist individuals who have lost their jobs. States administer the programs and have the power to determine eligibility criteria for unemployment benefits as well as the duration and amount of payments. In Massachusetts, individuals can file unemployment claims through the Division of Unemployment Assistance (DUA).

After filing an initial claim, the claimant's former employer has ten days to respond and include any reasons why the claimant should be denied benefits. Most benefits disputes revolve around whether an employee quit or was discharged by their employer, as benefits are designed to help workers who have become unemployed through no fault of their own. If either party raises an issue over eligibility to claim benefits, a DUA claims adjuster contacts the claimant and the employer to request information (including copies of relevant documents), and then makes an initial ruling on whether or not to grant the benefits. The employee or employer can appeal this ruling and take their case to a mini-trial where both parties can present evidence and witnesses. Administrative Law Judges (ALJs) issue decisions in these first-level appeals. The speed of this adjudication process is important; the Massachusetts DUA is required to make every reasonable effort to complete the process within 40 days. In 2009, 21,682 of these first-level appeals were decided in Massachusetts, almost two-thirds of which were initiated by employees. State-wide, an average of 47 percent of claimants win when they initiate the appeal, and 75 percent of claimants win when their employer initiates the appeal.

The Harvard Legal Aid Bureau (HLAB) is a student legal services organization that represents clients in the Boston area. Law students provide many types of free legal services under the supervision of licensed attorneys overseen by a professor, including assistance in first-level appeals of unemployment compensation claims. HLAB students receive training on unemployment cases at the beginning of their second year and represent claimants during their second and third years.

Details of the intervention

Researchers conducted a randomized evaluation to test whether an offer of legal services affected the outcomes of unemployment claims appeal cases. When a claimant called HLAB requesting services, HLAB arranged a screening interview during which student-attorneys informed them that they were conducting an evaluation and requested their consent to participate. The study thus measures the impact of the offer on claimants who sought out legal services on their own.

After the claimant consented to participate, researchers randomly assigned the case to either receive an offer of legal assistance or not. In total, 207 cases were randomized between summer 2008 and spring 2010: 78 into treatment and 129 into control. Shortly after the screening interview, HLAB contacted claimants in the treatment group to offer them representation. HLAB provided claimants in the control group with names and telephone numbers of other legal services providers in the area. Researchers tracked the outcome and length of the cases in both groups.

When representing claimants, HLAB gathered evidence by requesting files from employers, interviewing the client to ascertain basic facts, preparing clients for cross-examination, and finding and interviewing additional witnesses. During the proceedings, the DUA adjudicator initiated the questioning and reviewed relevant documents gathered by the claims adjuster. The student attorney gave an opening and closing statement, asked additional questions of witnesses, introduced relevant documents, and objected to testimony on evidentiary grounds.

Results and policy lessons

Researchers found no evidence that an offer of HLAB services impacted the odds that an unemployment benefits claimant would win their case. The offer also delayed adjudication by two weeks on average; because the clients are seeking benefits, the delays were not in their interests. Cases receiving an HLAB offer took 53 days from the initial intake to the final decision, relative to 37 days in the control group. Of those offered HLAB representation, 90 percent had representation during their hearings. In the control group, about 39 percent found representation from another source. The use of services from other sources also delayed adjudication and similarly did not affect the probability that a client would prevail in their case.

The delays were likely driven by the time lawyers needed to investigate facts and prepare for cases. Researchers suggest three possible explanations for the result that an offer of legal services did not affect appeal outcomes. First, claimants who initiated

contact with the HLAB may have had characteristics that made them more likely to win their cases than the general public, like an above average willingness to put forth the extra effort to seek counsel or to investigate their cases. Second, since the DUA claims adjuster is responsible for collecting the initial documents for the case, it is possible that DUA created a system that was accessible and effective for claimants that chose to represent themselves. Third, the issues in first-level appeals are relatively simple which may make the system particularly accessible to claimants who self-represent, making it less likely that additional legal services could change the outcome of a case.

These results point to client outreach and intake systems as a key driver of a legal service provider's impact. Providers have three types of potential clients: those who will lose regardless of representation, those who will win regardless, and those for whom legal representation will improve their case's outcome. Client outreach and intake systems may play a key role in determining the proportion of cases for which representation will make a difference. Future evaluations could help legal services providers target their offers of representation more efficiently to maximize their impact. Another key determinant of the effectiveness of a legal services provider's impact is likely the characteristics of the adjudicatory system. A system in which the adjudicators undertake to gather relevant documents and to initiate questioning of witnesses may already be performing many of the tasks that legal advocates would perform.

Grenier, James, and Cassandra Wolos Pattanayak. "Randomized evaluation in legal assistance: What difference does representation (offer and actual use) make?" Yale Law Journal 121 (2011): 2118.