

A bill for an act

relating to unemployment insurance; modifying unemployment insurance and workforce development provisions; amending Minnesota Statutes 2010, sections 116L.17, subdivision 1; 116L.561, subdivision 7; 268.035, subdivisions 4, 19a, 20, 23, 23a, 29, 32; 268.051, subdivisions 5, 6, 8; 268.057, subdivision 2; 268.07, subdivisions 2, 3b; 268.085, subdivision 3; 268.095, subdivision 10; 268.115, subdivision 1; 268.184, subdivisions 1, 1a; Laws 2009, chapter 78, article 3, section 16.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

ARTICLE 1

UNEMPLOYMENT INSURANCE POLICY

Section 1. Minnesota Statutes 2010, section 268.035, subdivision 19a, is amended to read:

Subd. 19a. **Immediate family member.** "Immediate family member" means an individual's spouse, parent, stepparent, grandparent, son or daughter, stepson or stepdaughter, or grandson or granddaughter.

EFFECTIVE DATE. This section is effective July 1, 2011, and applies to determinations and appeal decisions issued on or after that date.

Sec. 2. Minnesota Statutes 2010, section 268.035, subdivision 23, is amended to read:

Subd. 23. **State's average annual and average weekly wage.** (a) On or before June 30 of each year, the commissioner shall calculate the state's average annual wage and the state's average weekly wage in the following manner:

(1) The sum of the total monthly covered employment reported by all employers for the prior calendar year is divided by 12 to calculate the average monthly covered employment.

(2) The sum of the total wages paid for all covered employment reported by all employers for the prior calendar year is divided by the average monthly covered employment to calculate the state's average annual wage.

(3) The state's average annual wage is divided by 52 to calculate the state's average weekly wage.

(b) For purposes of calculating the amount of taxable wages, the state's average annual wage applies to the calendar year following the calculation.

(c) For purposes of calculating (1) the state's maximum weekly unemployment benefit amount available on any benefit account under section 268.07, subdivision 2a, and (2) the wage credits necessary to establish a benefit account under section 268.07, subdivision 2, the state's average weekly wage applies to the one-year period beginning the last Sunday in October of the calendar year of the calculation.

EFFECTIVE DATE. This section is effective October 28, 2012.

Sec. 3. Minnesota Statutes 2010, section 268.035, subdivision 23a, is amended to read:

Subd. 23a. **Suitable employment.** (a) Suitable employment means employment in the applicant's labor market area that is reasonably related to the applicant's qualifications. In determining whether any employment is suitable for an applicant, the degree of risk involved to the health and safety, physical fitness, prior training, experience, length of unemployment, prospects for securing employment in the applicant's customary occupation, and the distance of the employment from the applicant's residence is considered.

(b) In determining what is suitable employment, primary consideration is given to the temporary or permanent nature of the applicant's separation from employment and whether the applicant has favorable prospects of finding employment in the applicant's usual or customary occupation at the applicant's past wage level within a reasonable period of time.

If prospects are unfavorable, employment at lower skill or wage levels is suitable if the applicant is reasonably suited for the employment considering the applicant's education, training, work experience, and current physical and mental ability.

The total compensation must be considered, including the wage rate, hours of employment, method of payment, overtime practices, bonuses, incentive payments, and fringe benefits.

(c) When potential employment is at a rate of pay lower than the applicant's former rate, consideration must be given to the length of the applicant's unemployment and the proportion of difference in the rates. Employment that may not be suitable because of lower wages during the early weeks of the applicant's unemployment may become suitable as the duration of unemployment lengthens.

(d) For an applicant seasonally unemployed, suitable employment includes temporary work in a lower skilled occupation that pays average gross weekly wages equal to or more than 150 percent of the applicant's weekly unemployment benefit amount.

(e) If a majority of the applicant's weeks of employment in the base period includes part-time employment, part-time employment in a position with comparable skills and comparable hours that pays comparable wages is considered suitable employment.

Full-time employment is not considered suitable employment for an applicant if a majority of the applicant's weeks of employment in the base period includes part-time employment.

(f) To determine suitability of employment in terms of shifts, the arrangement of hours in addition to the total number of hours is to be considered. Employment on a second, third, rotating, or split shift is suitable employment if it is customary in the occupation in the labor market area.

(g) Employment is not considered suitable if:

(1) the position offered is vacant because of a labor dispute;

(2) the wages, hours, or other conditions of employment are substantially less favorable than those prevailing for similar employment in the labor market area;

(3) as a condition of becoming employed, the applicant would be required to join a company union or to resign from or refrain from joining any bona fide labor organization; or

(4) the employment is with a staffing service and less than ~~45~~ 25 percent of the applicant's wage credits are from a job assignment with the client of a staffing service.

(h) A job assignment with a staffing service is considered suitable only if ~~45~~ 25 percent or more of the applicant's wage credits are from job assignments with clients of a staffing service and the job assignment meets the definition of suitable employment under paragraph (a).

Sec. 4. Minnesota Statutes 2010, section 268.035, subdivision 32, is amended to read:

Subd. 32. **Weekly unemployment benefit amount.** "Weekly unemployment benefit amount" means the amount of unemployment benefits computed under section 268.07, subdivision 2, paragraph (b) 2a.

Sec. 5. Minnesota Statutes 2010, section 268.051, subdivision 8, is amended to read:

Subd. 8. **Special assessment for interest on federal loan.** (a) If on October 31 of any year, the commissioner, in consultation with the commissioner of management and budget, determines that an interest payment will be due during the following calendar year on any loan from the federal unemployment trust fund under section 268.194, subdivision 6, a special assessment on taxpaying employers will be in effect for the following calendar year. The legislature authorizes the commissioner, in consultation with the commissioner of management and budget, to determine the appropriate level of the assessment, ~~from two percent~~ up to eight percent of the total quarterly unemployment taxes due based upon determined rates and assigned assessments under subdivision 2, that will be necessary to pay the interest due on the loan.

(b) The special assessment must be placed into a special account from which the commissioner must pay any interest that has accrued on any loan from the federal unemployment trust fund provided for under section 268.194, subdivision 6. If, at the end of each calendar quarter, the commissioner, in consultation with the commissioner of management and budget, determines that the balance in this special account, including interest earned on the special account, is more than is necessary to pay the interest ~~that has accrued on any loan as of that date, or will accrue over the following calendar quarter,~~ the commissioner must immediately pay to the trust fund the amount in excess of that necessary to pay the interest on any loan.

Sec. 6. Minnesota Statutes 2010, section 268.07, subdivision 2, is amended to read:

Subd. 2. **Benefit account requirements.** (a) Unless paragraph (b) applies, to establish a benefit account:

~~(1) using the primary base period under section 268.035, subdivision 4, paragraph (a), an applicant must have:~~

~~(i) wage credits in the high quarter of \$1,000 or more; and~~

~~(ii) wage credits, in other than the high quarter, of \$250 or more; or~~

~~(2) using the secondary base period under section 268.035, subdivision 4, paragraph (b);~~ An applicant must have total wage credits in the high applicant's four quarter base period of \$1,000 or more at least: (1) \$2,400; or (2) 5.3 percent of the state's average annual wage rounded down to the next lower \$100, whichever is higher.

(b) To establish a new benefit account within 52 calendar weeks following the expiration of the benefit year on a prior benefit account, an applicant ~~must meet the requirements of paragraph (a) and~~ must have performed services in covered employment in a calendar quarter that started after the effective date of the prior benefit account. The

~~wage credits~~ wages paid for those services must be at least ~~eight times the weekly benefit~~
~~amount on the prior benefit account~~ enough to meet the requirements of paragraph (a),
and have been reported on wage detail under section 268.044. One of the reasons for
this paragraph is to prevent an applicant from establishing a second benefit account as a
result of one loss of employment.

EFFECTIVE DATE. This section is effective for applications for unemployment
benefits made on or after October 28, 2012, except that in paragraph (b), the striking of
"wage credits" and the insertion of "wages paid" and the insertion of "and have been
reported on wage detail under section 268.044" are effective the day following final
enactment.

Sec. 7. Minnesota Statutes 2010, section 268.07, subdivision 3b, is amended to read:

Subd. 3b. **Limitations on applications and benefit accounts.** (a) An application for
unemployment benefits is effective the Sunday of the calendar week that the application
was filed. An application for unemployment benefits may be backdated one calendar week
before the Sunday of the week the application was actually filed if the applicant requests
the backdating at the time the application is filed. An application may be backdated only if
the applicant had no employment during the period of the backdating. If an individual
attempted to file an application for unemployment benefits, but was prevented from filing
an application by the department, the application is effective the Sunday of the calendar
week the individual first attempted to file an application.

(b) A benefit account established under subdivision 2 is effective the date the
application for unemployment benefits was effective.

(c) A benefit account, once established, may later be withdrawn only if:

(1) the applicant has not been paid any unemployment benefits on that benefit
account; and

(2) a new application for unemployment benefits is filed and a new benefit account is
established at the time of the withdrawal.

A determination or amended determination of eligibility or ineligibility issued under
section 268.101, that was sent before the withdrawal of the benefit account, remains in
effect and is not voided by the withdrawal of the benefit account. ~~A determination of~~
~~ineligibility requiring subsequent earnings to satisfy the period of ineligibility under~~
~~section 268.095, subdivision 10, applies to the weekly unemployment benefit amount on~~
~~the new benefit account.~~

(d) An application for unemployment benefits is not allowed before the Sunday
following the expiration of the benefit year on a prior benefit account. Except as allowed

6.1 under paragraph (c), an applicant may establish only one benefit account each 52 calendar
6.2 weeks.

6.3 **EFFECTIVE DATE.** This section is effective October 28, 2012, and applies
6.4 retroactively from July 1, 2011.

6.5 Sec. 8. Minnesota Statutes 2010, section 268.085, subdivision 3, is amended to read:

6.6 Subd. 3. **Payments that delay unemployment benefits.** (a) An applicant is not
6.7 eligible to receive unemployment benefits for any week with respect to which the applicant
6.8 is receiving, has received, or has filed for payment, equal to or in excess of the applicant's
6.9 weekly unemployment benefit amount, in the form of:

6.10 (1) vacation pay, sick pay, or personal time off pay, also known as "PTO," paid
6.11 upon temporary, indefinite, or seasonal separation. This clause does not apply to (i)
6.12 vacation pay, sick pay, or personal time off pay, paid upon a permanent separation from
6.13 employment, or (ii) vacation pay, sick pay, or personal time off pay, paid from a vacation
6.14 fund administered by a union or a third party not under the control of the employer;

6.15 (2) severance pay, bonus pay, ~~sick pay~~, and any other payments, except earnings
6.16 under subdivision 5, and back pay under subdivision 6, paid by an employer because of,
6.17 upon, or after separation from employment, but only if the payment is considered wages at
6.18 the time of payment under section 268.035, subdivision 29; or

6.19 (3) pension, retirement, or annuity payments from any plan contributed to by a base
6.20 period employer including the United States government, except Social Security benefits
6.21 that are provided for in subdivision 4. The base period employer is considered to have
6.22 contributed to the plan if the contribution is excluded from the definition of wages under
6.23 section 268.035, subdivision 29, clause (1).

6.24 If the pension, retirement, or annuity payment is paid in a lump sum, an applicant is
6.25 not considered to have received a payment if (i) the applicant immediately deposits that
6.26 payment in a qualified pension plan or account, or (ii) that payment is an early distribution
6.27 for which the applicant paid an early distribution penalty under the Internal Revenue
6.28 Code, United States Code, title 26, section 72(t)(1).

6.29 (b) This subdivision applies to all the weeks of payment. Payments under paragraph
6.30 (a), clause (1), are applied to the period immediately following the last day of employment.
6.31 The number of weeks of payment is determined as follows:

6.32 (1) if the payments are made periodically, the total of the payments to be received is
6.33 divided by the applicant's last level of regular weekly pay from the employer; or

6.34 (2) if the payment is made in a lump sum, that sum is divided by the applicant's last
6.35 level of regular weekly pay from the employer.

(c) If the payment is less than the applicant's weekly unemployment benefit amount, unemployment benefits are reduced by the amount of the payment.

EFFECTIVE DATE. This section is effective for determinations issued on or after August 7, 2011.

Sec. 9. Minnesota Statutes 2010, section 268.095, subdivision 10, is amended to read:

Subd. 10. **Ineligibility duration.** (a) Ineligibility from the payment of all unemployment benefits under subdivisions 1 and 4 is for the duration of the applicant's unemployment and until the end of the calendar week that the applicant had total earnings ~~wages paid~~ in subsequent covered employment ~~of eight times the applicant's weekly unemployment benefit amount~~ sufficient to meet one-half of the requirements of section 268.07, subdivision 2, paragraph (a).

(b) Ineligibility imposed under subdivisions 1 and 4 begins on the Sunday of the week that the applicant became separated from employment.

(c) In addition to paragraph (a), if the applicant was discharged from employment because of aggravated employment misconduct, wage credits from that employment are canceled and cannot be used for purposes of a benefit account under section 268.07, subdivision 2.

EFFECTIVE DATE. This section is effective October 28, 2012, and applies to all requalifications after that date.

Sec. 10. Laws 2009, chapter 78, article 3, section 16, is amended to read:

Sec. 16. **ENTREPRENEURSHIP FOR DISLOCATED WORKERS.**

Subdivision 1. **Authorization.** Minnesota has been awarded a federal grant by the United States Department of Labor under the Project GATE (Growing America Through Entrepreneurship) program to assist certain dislocated workers in starting a business. Providing unemployment benefits while the dislocated worker is receiving services such as entrepreneurial training, business counseling, and technical assistance will assist in the success of this pilot project. In order to provide unemployment benefits to individuals enrolled in this pilot program, the commissioner of employment and economic development is authorized to waive:

(1) the availability for suitable employment requirements of Minnesota Statutes, section 268.085, subdivision 1, clause (5),

~~as well as (2) the earnings deductibility provisions of Minnesota Statutes, section 268.085, subdivision 5, for individuals enrolled in this pilot project. and~~

(3) the 32 hours of work limitation of Minnesota Statutes, section 268.085, subdivision 2, clause (6).

Subd. 2. **Limitations.** A maximum of 500 applicants for unemployment benefits are authorized to receive a waiver.

Subd. 3. **Expiration date.** The authorization under subdivision 1 expires June 30, 2012.

EFFECTIVE DATE. This section is effective the Sunday following final enactment.

ARTICLE 2

UNEMPLOYMENT INSURANCE HOUSEKEEPING

Section 1. Minnesota Statutes 2010, section 268.035, subdivision 4, is amended to read:

Subd. 4. **Base period.** (a) "Base period," unless otherwise provided in this subdivision, means the ~~last~~ most recent four completed calendar quarters before the effective date of an applicant's application for unemployment benefits if the application has an effective date occurring after the month following the ~~last~~ most recent completed calendar quarter. The base period defined in this paragraph is considered the primary base period. The base period under this paragraph is as follows:

If the application for unemployment benefits is effective on or between these dates:	The base period is the prior:
February 1 - March 31	January 1 - December 31
May 1 - June 30	April 1 - March 31
August 1 - September 30	July 1 - June 30
November 1 - December 31	October 1 - September 30

(b) If an application for unemployment benefits has an effective date that is during the month following the ~~last~~ most recent completed calendar quarter, then the base period is the first four of the ~~last~~ most recent five completed calendar quarters before the effective date of an applicant's application for unemployment benefits. The base period defined in this paragraph is considered the secondary base period. The base period under this paragraph is as follows:

If the application for unemployment benefits is effective on or between these dates:	The base period is the prior:
January 1 - January 31	October 1 - September 30
April 1 - April 30	January 1 - December 31
July 1 - July 31	April 1 - March 31
October 1 - October 31	July 1 - June 30

(c) If the applicant has insufficient wage credits to establish a benefit account under paragraph (a) or (b), but during the base period under paragraph (a) or (b) an applicant received workers' compensation for temporary disability under chapter 176 or a similar federal law or similar law of another state, or if an applicant whose own serious illness caused a loss of work for which the applicant received compensation for loss of wages from some other source, the applicant may request an extended base period as follows:

(1) if an applicant was compensated for a loss of work of seven to 13 weeks, the base period is the first four of the ~~last~~ most recent six completed calendar quarters before the effective date of the application for unemployment benefits;

(2) if an applicant was compensated for a loss of work of 14 to 26 weeks, the base period is the first four of the ~~last~~ most recent seven completed calendar quarters before the effective date of the application for unemployment benefits;

(3) if an applicant was compensated for a loss of work of 27 to 39 weeks, the base period is the first four of the ~~last~~ most recent eight completed calendar quarters before the effective date of the application for unemployment benefits; and

(4) if an applicant was compensated for a loss of work of 40 to 52 weeks, the base period is the first four of the ~~last~~ most recent nine completed calendar quarters before the effective date of the application for unemployment benefits.

(d) If the applicant has insufficient wage credits to establish a benefit account using the secondary base period under paragraph (b), an alternate base period of the ~~last~~ most recent four completed calendar quarters before the effective date of the applicant's application for unemployment benefits will be used. Establishment of a benefit account is in accordance with section 268.07, subdivision 2.

(e) No base period under paragraph (a), (b), (c), or (d) may include wage credits upon which a prior benefit account was established.

(f) Regardless of paragraph (a), the secondary base period in paragraph (b) must be used if the applicant has more wage credits under that base period than under the primary base period in paragraph (a).

Sec. 2. Minnesota Statutes 2010, section 268.035, subdivision 20, is amended to read:

Subd. 20. **Noncovered employment.** "Noncovered employment" means:

(1) employment for the United States government or an instrumentality thereof, including military service;

(2) employment for a state, other than Minnesota, or a political subdivision or instrumentality thereof;

(3) employment for a foreign government;

10.1 (4) employment for an instrumentality wholly owned by a foreign government,
10.2 if the employment is of a character similar to that performed in foreign countries by
10.3 employees of the United States government or an instrumentality thereof and the United
10.4 States Secretary of State has certified that the foreign government grants an equivalent
10.5 exemption to similar employment performed in the foreign country by employees of the
10.6 United States government and instrumentalities thereof;

10.7 (5) employment covered under United States Code, title 45, section 351, the
10.8 Railroad Unemployment Insurance Act;

10.9 (6) employment covered by a reciprocal arrangement between the commissioner and
10.10 another state or the federal government that provides that all employment performed by an
10.11 individual for an employer during the period covered by the reciprocal arrangement is
10.12 considered performed entirely within another state;

10.13 (7) employment for a church or convention or association of churches, or an
10.14 organization operated primarily for religious purposes that is operated, supervised,
10.15 controlled, or principally supported by a church or convention or association of churches
10.16 described in United States Code, title 26, section 501(c)(3) of the federal Internal Revenue
10.17 Code and exempt from income tax under section 501(a);

10.18 (8) employment of a duly ordained or licensed minister of a church in the exercise of
10.19 a ministry or by a member of a religious order in the exercise of duties required by the
10.20 order, for Minnesota or a political subdivision or an organization described in United
10.21 States Code, title 26, section 501(c)(3) of the federal Internal Revenue Code and exempt
10.22 from income tax under section 501(a);

10.23 (9) employment of an individual receiving rehabilitation of "sheltered" work in
10.24 a facility conducted for the purpose of carrying out a program of rehabilitation for
10.25 individuals whose earning capacity is impaired by age or physical or mental deficiency
10.26 or injury or a program providing "sheltered" work for individuals who because of an
10.27 impaired physical or mental capacity cannot be readily absorbed in the competitive labor
10.28 market. This clause applies only to services performed for Minnesota or a political
10.29 subdivision or an organization described in United States Code, title 26, section 501(c)(3)
10.30 of the federal Internal Revenue Code and exempt from income tax under section 501(a)
10.31 in a facility certified by the Rehabilitation Services Branch of the department or in a day
10.32 training or habilitation program licensed by the Department of Human Services;

10.33 (10) employment of an individual receiving work relief or work training as part of
10.34 an unemployment work relief or work training program assisted or financed in whole or
10.35 in part by any federal agency or an agency of a state or political subdivision thereof.
10.36 This clause applies only to employment for Minnesota or a political subdivision or an

11.1 organization described in United States Code, title 26, section 501(c)(3) of the federal
11.2 Internal Revenue Code and exempt from income tax under section 501(a). This clause does
11.3 not apply to programs that require unemployment benefit coverage for the participants;
11.4 (11) employment for Minnesota or a political subdivision as an elected official, a
11.5 member of a legislative body, or a member of the judiciary;
11.6 (12) employment as a member of the Minnesota National Guard or Air National
11.7 Guard;
11.8 (13) employment for Minnesota, a political subdivision, or instrumentality thereof,
11.9 as an employee serving only on a temporary basis in case of fire, flood, tornado, or
11.10 similar emergency;
11.11 (14) employment as an election official or election worker for Minnesota or a
11.12 political subdivision, but only if the compensation for that employment was less than
11.13 \$1,000 in a calendar year;
11.14 (15) employment for Minnesota that is a major policy-making or advisory position
11.15 in the unclassified service, including those positions established under section 43A.08,
11.16 subdivision 1a;
11.17 (16) employment for a political subdivision of Minnesota that is a nontenured major
11.18 policy making or advisory position;
11.19 (17) domestic employment in a private household, local college club, or local
11.20 chapter of a college fraternity or sorority performed for a person, only if the wages paid
11.21 in any calendar quarter in either the current or prior calendar year to all individuals in
11.22 domestic employment totaled less than \$1,000.
11.23 "Domestic employment" includes all service in the operation and maintenance of a
11.24 private household, for a local college club, or local chapter of a college fraternity or
11.25 sorority as distinguished from service as an employee in the pursuit of an employer's
11.26 trade or business;
11.27 (18) employment of an individual by a son, daughter, or spouse, and employment of
11.28 a child under the age of 18 by the child's father or mother;
11.29 (19) employment for a personal care assistance provider agency by an immediate
11.30 family member of a recipient who provides the direct care to the recipient through the
11.31 personal care assistance program under section 256B.0659;
11.32 (20) employment of an inmate of a custodial or penal institution;
11.33 (21) employment for a school, college, or university by a student who is enrolled
11.34 and is regularly attending classes at whose primary relation to the school, college, or
11.35 university is as a student. This does not include an individual whose primary relation to
11.36 the school, college, or university is as an employee who also takes courses;

12.1 (22) employment of an individual who is enrolled as a student in a full-time program
12.2 at a nonprofit or public educational institution that maintains a regular faculty and
12.3 curriculum and has a regularly organized body of students in attendance at the place
12.4 where its educational activities are carried on, taken for credit at the institution, that
12.5 combines academic instruction with work experience, if the employment is an integral
12.6 part of the program, and the institution has so certified to the employer, except that this
12.7 clause does not apply to employment in a program established for or on behalf of an
12.8 employer or group of employers;

12.9 (23) employment of university, college, or professional school students in an
12.10 internship or other training program with the city of St. Paul or the city of Minneapolis
12.11 under Laws 1990, chapter 570, article 6, section 3;

12.12 (24) employment for a hospital by a patient of the hospital. "Hospital" means an
12.13 institution that has been licensed by the Department of Health as a hospital;

12.14 (25) employment as a student nurse for a hospital or a nurses' training school by
12.15 an individual who is enrolled and is regularly attending classes in an accredited nurses'
12.16 training school;

12.17 (26) employment as an intern for a hospital by an individual who has completed a
12.18 four-year course in an accredited medical school;

12.19 (27) employment as an insurance salesperson, by other than a corporate officer, if all
12.20 the wages from the employment is solely by way of commission. The word "insurance"
12.21 includes an annuity and an optional annuity;

12.22 (28) employment as an officer of a township mutual insurance company or farmer's
12.23 mutual insurance company operating under chapter 67A;

12.24 (29) employment of a corporate officer, if the officer directly or indirectly, including
12.25 through a subsidiary or holding company, owns 25 percent or more of the employer
12.26 corporation, and employment of a member of a limited liability company, if the member
12.27 directly or indirectly, including through a subsidiary or holding company, owns 25 percent
12.28 or more of the employer limited liability company;

12.29 (30) employment as a real estate salesperson, by other than a corporate officer, if all
12.30 the wages from the employment is solely by way of commission;

12.31 (31) employment as a direct seller as defined in United States Code, title 26, section
12.32 3508;

12.33 (32) employment of an individual under the age of 18 in the delivery or distribution
12.34 of newspapers or shopping news, not including delivery or distribution to any point for
12.35 subsequent delivery or distribution;

13.1 (33) casual employment performed for an individual, other than domestic
13.2 employment under clause (17), that does not promote or advance that employer's trade or
13.3 business;

13.4 (34) employment in "agricultural employment" unless considered "covered
13.5 agricultural employment" under subdivision 11; or

13.6 (35) if employment during one-half or more of any pay period was covered
13.7 employment, all the employment for the pay period is considered covered employment;
13.8 but if during more than one-half of any pay period the employment was noncovered
13.9 employment, then all of the employment for the pay period is considered noncovered
13.10 employment. "Pay period" means a period of not more than a calendar month for which a
13.11 payment or compensation is ordinarily made to the employee by the employer.

13.12 Sec. 3. Minnesota Statutes 2010, section 268.035, subdivision 29, is amended to read:

13.13 Subd. 29. **Wages.** (a) "Wages" means all compensation for services, including
13.14 commissions; bonuses, awards, and prizes; severance payments; standby pay; vacation and
13.15 holiday pay; back pay as of the date of payment; tips and gratuities paid to an employee by
13.16 a customer of an employer and accounted for by the employee to the employer; sickness
13.17 and accident disability payments, except as otherwise provided in this subdivision; and the
13.18 cash value of housing, utilities, meals, exchanges of services, and any other goods and
13.19 services provided to compensate for an employee's services, except:

13.20 (1) the amount of any payment made to, or on behalf of, an employee under a plan
13.21 established by an employer that makes provision for employees generally or for a class
13.22 or classes of employees, including any amount paid by an employer for insurance or
13.23 annuities, or into a plan, to provide for a payment, on account of (i) retirement or (ii)
13.24 medical and hospitalization expenses in connection with sickness or accident disability,
13.25 or (iii) death;

13.26 (2) the payment by an employer of the tax imposed upon an employee under United
13.27 States Code, title 26, section 3101 of the Federal Insurance Contribution Act, with respect
13.28 to compensation paid to an employee for domestic employment in a private household of
13.29 the employer or for agricultural employment;

13.30 (3) any payment made to, or on behalf of, an employee or beneficiary (i) from or
13.31 to a trust described in United States Code, title 26, section 401(a) of the federal Internal
13.32 Revenue Code, that is exempt from tax under section 501(a) at the time of the payment
13.33 unless the payment is made to an employee of the trust as compensation for services as an
13.34 employee and not as a beneficiary of the trust, or (ii) under or to an annuity plan that, at
13.35 the time of the payment, is a plan described in section 403(a);

14.1 (4) the value of any special discount or markdown allowed to an employee on goods
14.2 purchased from or services supplied by the employer where the purchases are optional and
14.3 do not constitute regular or systematic payment for services;

14.4 (5) customary and reasonable directors' fees paid to individuals who are not
14.5 otherwise employed by the corporation of which they are directors;

14.6 (6) the payment to employees for reimbursement of meal expenses when employees
14.7 are required to perform work after their regular hours;

14.8 (7) the payment into a trust or plan for purposes of providing legal or dental services
14.9 if provided for all employees generally or for a class or classes of employees;

14.10 (8) the value of parking facilities provided or paid for by an employer, in whole or in
14.11 part, if provided for all employees generally or for a class or classes of employees;

14.12 (9) royalties to an owner of a franchise, license, copyright, patent, oil, mineral,
14.13 or other right;

14.14 (10) advances or reimbursements for traveling or other bona fide ordinary and
14.15 necessary expenses incurred or reasonably expected to be incurred in the business of the
14.16 employer. Traveling and other reimbursed expenses must be identified either by making
14.17 separate payments or by specifically indicating the separate amounts where both wages
14.18 and expense allowances are combined in a single payment;

14.19 (11) residual payments to radio, television, and similar artists that accrue after
14.20 the production of television commercials, musical jingles, spot announcements, radio
14.21 transcriptions, film sound tracks, and similar activities;

14.22 (12) ~~supplemental payments made to supplement unemployment benefits paid under~~
14.23 ~~a plan established by an employer, that makes provisions for employees generally or for a~~
14.24 ~~class or classes of employees for the supplementing of unemployment benefits under the~~
14.25 ~~written terms of an agreement, contract, trust arrangement, or other instrument, if the plan~~
14.26 ~~provides benefits that are only supplemental to, and does not replace or duplicate any state~~
14.27 ~~or federal unemployment benefits. The plan must provide that funds are paid supplemental~~
14.28 ~~payments solely for the supplementing of weekly state or federal unemployment benefits.~~
14.29 The plan must provide that any supplemental benefits are payable payments only if for
14.30 those weeks the applicant has applied for all been paid regular, extended, or additional
14.31 unemployment benefits available. The plan must provide that supplemental benefits
14.32 payments, when combined with the applicant's weekly unemployment benefits available
14.33 paid, may not exceed the applicant's regular weekly pay. The plan must not allow the
14.34 assignment of supplemental benefits payments or provide for any type of additional
14.35 payment upon the employee's withdrawal from the plan, or quitting of employment or the
14.36 termination of the plan. The plan must not require any consideration from the applicant

15.1 and must not be designed for the purpose of avoiding the payment of Social Security
15.2 obligations, or unemployment taxes on money disbursed from the plan;

15.3 (13) sickness or accident disability payments made by the employer after the
15.4 expiration of six calendar months following the last calendar month that the individual
15.5 worked for the employer;

15.6 (14) disability payments made under the provisions of any workers' compensation
15.7 law;

15.8 (15) sickness or accident disability payments made by a third-party payer such as
15.9 an insurance company; or

15.10 (16) payments made into a trust fund, or for the purchase of insurance or an annuity,
15.11 to provide for sickness or accident disability payments to employees under a plan or
15.12 system established by the employer that provides for the employer's employees generally
15.13 or for a class or classes of employees.

15.14 (b) Nothing in this subdivision excludes from the term "wages" any payment
15.15 made under any type of salary reduction agreement, including payments made under a
15.16 cash or deferred arrangement and cafeteria plan, as defined in United States Code, title
15.17 26, sections 401(k) and 125 of the federal Internal Revenue Code, to the extent that the
15.18 employee has the option to receive the payment in cash.

15.19 (c) Wages includes payments made for services as a caretaker. Unless there is a
15.20 contract or other proof to the contrary, compensation is considered as being equally
15.21 received by a married couple where the employer makes payment to only one spouse, or
15.22 by all tenants of a household who perform services where two or more individuals share
15.23 the same dwelling and the employer makes payment to only one individual.

15.24 (d) Wages includes payments made for services by a migrant family. Where services
15.25 are performed by a married couple or a family and an employer makes payment to only
15.26 one individual, each worker is considered as having received an equal share of the
15.27 compensation unless there is a contract or other proof to the contrary.

15.28 (e) Wages includes advances or draws against future earnings, when paid, unless
15.29 the payments are designated as a loan or return of capital on the books of the employer
15.30 at the time of payment.

15.31 (f) Wages includes payments made by a subchapter "S" corporation, as organized
15.32 under the Internal Revenue Code, to or on behalf of officers and shareholders that are
15.33 reasonable compensation for services performed for the corporation.

15.34 For a subchapter "S" corporation, wages does not include:

(1) a loan for business purposes to an officer or shareholder evidenced by a promissory note signed by an officer before the payment of the loan proceeds and recorded on the books and records of the corporation as a loan to an officer or shareholder;

(2) a repayment of a loan or payment of interest on a loan made by an officer to the corporation and recorded on the books and records of the corporation as a liability;

(3) a reimbursement of reasonable corporation expenses incurred by an officer and documented by a written expense voucher and recorded on the books and records of the corporation as corporate expenses; and

(4) a reasonable lease or rental payment to an officer who owns property that is leased or rented to the corporation.

Sec. 4. Minnesota Statutes 2010, section 268.051, subdivision 5, is amended to read:

Subd. 5. **Tax rate for new employers.** (a) Each new taxpaying employer that does not qualify for an experience rating under subdivision 3, except new employers in a high experience rating industry, must be assigned, for a calendar year, a tax rate the higher of (1) one percent, or (2) the tax rate computed, to the nearest 1/100 of a percent, by dividing the total amount of unemployment benefits paid all applicants during the 48 calendar months ending on June 30 of the prior calendar year by the total taxable wages of all taxpaying employers during the same period, plus the applicable base tax rate and any additional assessments under subdivision 2, paragraph (c).

(b) Each new taxpaying employer in a high experience rating industry that does not qualify for an experience rating under subdivision 3, must be assigned, for a calendar year, a tax rate the higher of (1) that assigned under paragraph (a), or (2) the tax rate, computed to the nearest 1/100 of a percent, by dividing the total amount of unemployment benefits paid to all applicants from high experience rating industry employers during the 48 calendar months ending on June 30 of the prior calendar year by the total taxable wages of all high experience rating industry employers during the same period, to a maximum provided for under subdivision 3, paragraph (b), plus the applicable base tax rate and any additional assessments under subdivision 2, paragraph (c).

(c) An employer is considered to be in a high experience rating industry if:

(1) the employer is engaged in residential, commercial, or industrial construction, including general contractors;

(2) the employer is engaged in sand, gravel, or limestone mining;

(3) the employer is engaged in the manufacturing of concrete, concrete products, or asphalt; or

17.1 (4) the employer is engaged in road building, repair, or resurfacing, including bridge
17.2 and tunnels and residential and commercial driveways and parking lots.

17.3 (d) The commissioner must send to the new employer, by mail or electronic
17.4 transmission, ~~notice~~ determination of the tax rate assigned. An employer may appeal the
17.5 ~~assignment~~ determination of a tax rate in accordance with the procedures in subdivision 6,
17.6 paragraph (c).

17.7 Sec. 5. Minnesota Statutes 2010, section 268.051, subdivision 6, is amended to read:

17.8 Subd. 6. **~~Notice~~ Determination of tax rate.** (a) On or before each December 15,
17.9 the commissioner must notify each employer by mail or electronic transmission of the
17.10 employer's tax rate, along with any additional assessments, fees, or surcharges, for the
17.11 following calendar year. The ~~notice~~ determination must contain the base tax rate and the
17.12 factors used in determining the employer's experience rating. Unless an appeal of the tax
17.13 rate is made, the computed tax rate is final, except for fraud or recomputation required
17.14 under subdivision 4 or 4a, and is the rate at which taxes must be paid. A recomputed tax
17.15 rate under subdivision 4 or 4a is the rate applicable for the quarter that includes the date of
17.16 acquisition and any quarter thereafter during the calendar year in which the acquisition
17.17 occurred. The tax rate is not subject to collateral attack by way of claim for a credit
17.18 adjustment or refund, or otherwise.

17.19 (b) If the legislature, after the sending of the determination of tax rate, changes any
17.20 of the factors used to determine the rate, a new tax rate based on the new factors must be
17.21 computed and sent to the employer.

17.22 (c) A review of an employer's tax rate may be obtained by the employer filing an
17.23 appeal within 20 calendar days from the date the determination of tax rate ~~notice~~ was sent
17.24 to the employer. Proceedings on the appeal are conducted in accordance with section
17.25 268.105.

17.26 (d) The commissioner may at any time upon the commissioner's own motion correct
17.27 any error in the employer's tax rate.

17.28 Sec. 6. Minnesota Statutes 2010, section 268.057, subdivision 2, is amended to read:

17.29 Subd. 2. **Priority of payments.** (a) Any payment received from a taxpaying
17.30 employer must be applied in the following order:

- 17.31 (1) unemployment insurance taxes; then
17.32 (2) special assessment for interest on any federal loan; then
17.33 (3) workforce development ~~fee~~ assessment; then
17.34 (4) interest on past due taxes; then

18.1 (5) penalties, late fees, administrative service fees, and costs.

18.2 (b) Paragraph (a) is the priority used for all payments received from a taxpaying
18.3 employer, regardless of how the employer may designate the payment to be applied,
18.4 except when:

18.5 (1) there is an outstanding lien and the employer designates that the payment made
18.6 should be applied to satisfy the lien;

18.7 (2) the payment is for back pay withheld from an applicant under section 268.085,
18.8 subdivision 6, paragraph (b);

18.9 (3) the payment is specifically designated by the employer to be applied to an
18.10 outstanding overpayment of unemployment benefits of an applicant;

18.11 (4) a court or administrative order directs that the payment be applied to a specific
18.12 obligation;

18.13 (5) a preexisting payment plan provides for the application of payment; or

18.14 (6) the commissioner, under the compromise authority of section 268.067, agrees to
18.15 apply the payment to a different priority.

18.16 Sec. 7. Minnesota Statutes 2010, section 268.115, subdivision 1, is amended to read:

18.17 Subdivision 1. **Definitions.** The terms used in this section have the following
18.18 meaning:

18.19 (1) "Extended unemployment benefit period" means a period that lasts for a
18.20 minimum of 13 weeks and that:

18.21 (i) Begins with the third week after there is a state "on" indicator; and

18.22 (ii) Ends with the third week after there is a state "off" indicator.

18.23 No extended unemployment benefit period may begin before the 14th week
18.24 following the end of a prior extended unemployment benefit period.

18.25 (2) There is a "state 'on' indicator" for a week if:

18.26 (i) for that week and the prior 12 weeks, the rate of insured unemployment:

18.27 (a) equaled or exceeded 120 percent of the average of the rates for the corresponding
18.28 13-week period ending in each of the prior two calendar years, and was five percent or
18.29 more; or

18.30 (b) equaled or exceeded six percent; or

18.31 (ii) The United States Secretary of Labor determines that the average rate of
18.32 seasonally adjusted total unemployment in Minnesota for the most recent three months
18.33 for which data is published equals or exceeds 6.5 percent and this rate equals or exceeds
18.34 110 percent of the rate of the corresponding three-month period in either of the prior
18.35 two calendar years.

19.1 (3) There is a "state 'off' indicator" for a week if:

19.2 (i) under clause (2)(i), for that week and the prior 12 weeks, the requirements for a
19.3 "state 'on' indicator" are not satisfied; or

19.4 (ii) under clause (2)(ii) the requirements for a "state 'on' indicator" are not satisfied.

19.5 (4) "Rate of insured unemployment," means the percentage derived by dividing the
19.6 average weekly number of applicants filing continued requests for regular unemployment
19.7 benefits in the most recent 13-week period by the average monthly covered employment
19.8 for the first four of the ~~last~~ most recent six completed calendar quarters before the end
19.9 of that 13-week period.

19.10 (5) "Regular unemployment benefits" means unemployment benefits available to
19.11 an applicant other than extended unemployment benefits and additional unemployment
19.12 benefits.

19.13 (6) "Eligibility period" for an applicant means the period consisting of the weeks
19.14 remaining in the applicant's benefit year within the extended unemployment benefit period
19.15 and, if the benefit year ends within the extended unemployment benefit period, any weeks
19.16 in the extended unemployment benefit period.

19.17 (7) "Exhaustee" means an applicant who, in the eligibility period:

19.18 (i) the benefit year having not expired has received the maximum amount of regular
19.19 unemployment benefits that were available under section 268.07; or

19.20 (ii) the benefit year having expired, has insufficient wage credits to establish a new
19.21 benefit account; and

19.22 has no right to any type of unemployment benefits under any other state or federal laws
19.23 and is not receiving unemployment benefits under the law of Canada.

19.24 Sec. 8. Minnesota Statutes 2010, section 268.184, subdivision 1, is amended to read:

19.25 Subdivision 1. **Administrative penalties.** (a) The commissioner must penalize
19.26 an employer if that employer or any employee, officer, or agent of that employer, is
19.27 in collusion with any applicant for the purpose of assisting the applicant to receive
19.28 unemployment benefits fraudulently. The penalty is \$500 or the amount of unemployment
19.29 benefits determined to be overpaid, whichever is greater.

19.30 (b) The commissioner must penalize an employer if that employer or any employee,
19.31 officer, or agent of that employer (1) made a false statement or representation knowing it
19.32 to be false, (2) made a false statement or representation without a good faith belief as to
19.33 correctness of the statement or representation, (3) knowingly failed to disclose a material
19.34 fact, or (4) made an offer of employment to an applicant when, in fact, the employer had
19.35 no employment available, but only if the employer's action:

20.1 (i) was taken to prevent or reduce the payment of unemployment benefits to any
20.2 applicant;

20.3 (ii) was taken to reduce or avoid any payment required from an employer under
20.4 this chapter or section 116L.20; or

20.5 (iii) caused an overpayment of unemployment benefits to an applicant.

20.6 The penalty is \$500, or 50 percent of the overpaid or reduced unemployment benefits
20.7 or payment required, whichever is greater.

20.8 (c) The commissioner must penalize an employer if that employer failed or refused
20.9 to honor a subpoena issued under section 268.105, subdivision 4, or section 268.188. The
20.10 penalty is \$500 and any costs of enforcing the subpoena, including attorney fees.

20.11 (d) Penalties under this subdivision are in addition to any other penalties and subject
20.12 to the same collection procedures that apply to past due taxes. Penalties must be paid
20.13 within 30 calendar days of assessment and credited to the contingent account.

20.14 (e) The ~~assessment~~ determination of the penalty is final unless the employer files an
20.15 appeal within 20 calendar days after the sending of ~~notice~~ determination of the penalty to
20.16 the employer by mail or electronic transmission. Proceedings on the appeal are conducted
20.17 in accordance with section 268.105.

20.18 Sec. 9. Minnesota Statutes 2010, section 268.184, subdivision 1a, is amended to read:

20.19 Subd. 1a. **Notification and misreporting penalties.** (a) If the commissioner finds
20.20 that any employer or agent of an employer failed to meet the notification requirements of
20.21 section 268.051, subdivision 4, the employer must be assessed a penalty of \$5,000 or two
20.22 percent of the first full quarterly payroll acquired, whichever is higher. Payroll is wages
20.23 paid as defined in section 268.035, subdivision 30. The penalty under this paragraph
20.24 must be canceled if the commissioner determines that the failure occurred because of
20.25 ignorance or inadvertence.

20.26 (b) If the commissioner finds that any individual advised an employer to violate the
20.27 employer's notification requirements under section 268.051, subdivision 4, the individual,
20.28 and that individual's employer, must each be assessed the penalty in paragraph (a).

20.29 (c) If the commissioner finds that any person or agent of a person violated the
20.30 reporting requirements of section 268.0435 or 268.046, the person must be assessed a
20.31 penalty of \$5,000 or two percent of the quarterly payroll reported in violation of section
20.32 268.0435 or 268.046, whichever is higher. Payroll is wages paid as defined in section
20.33 268.035, subdivision 30.

20.34 (d) Penalties under this subdivision are in addition to any other penalties and subject
20.35 to the same collection procedures that apply to past due amounts from an employer.

21.1 Penalties must be paid within 30 calendar days after sending of the ~~notice~~ determination
21.2 of penalty.

21.3 (e) The ~~assessment~~ determination of a penalty is final unless the person assessed
21.4 files an appeal within 20 calendar days after sending of the ~~notice~~ determination of the
21.5 penalty by mail or electronic transmission. Proceedings on the appeal are conducted in
21.6 accordance with section 268.105.

21.7 **ARTICLE 3**

21.8 **WORKFORCE DEVELOPMENT**

21.9 Section 1. Minnesota Statutes 2010, section 116L.17, subdivision 1, is amended to read:

21.10 Subdivision 1. **Definitions.** (a) For the purposes of this section, the following terms
21.11 have the meanings given them in this subdivision.

21.12 (b) "Commissioner" means the commissioner of employment and economic
21.13 development.

21.14 (c) "Dislocated worker" means an individual who is a resident of Minnesota at the
21.15 time employment ceased or was working in the state at the time employment ceased and:

21.16 (1) has been permanently separated or has received a notice of permanent separation
21.17 from public or private sector employment and is eligible for or has exhausted entitlement
21.18 to unemployment benefits, and is unlikely to return to the previous industry or occupation;

21.19 (2) has been long-term unemployed and has limited opportunities for employment
21.20 or reemployment in the same or a similar occupation in the area in which the individual
21.21 resides, including older individuals who may have substantial barriers to employment by
21.22 reason of age;

21.23 (3) has been terminated or has received a notice of termination of employment as a
21.24 result of a plant closing or a substantial layoff at a plant, facility, or enterprise;

21.25 (4) has been self-employed, including farmers and ranchers, and is unemployed as a
21.26 result of general economic conditions in the community in which the individual resides
21.27 or because of natural disasters;

21.28 (5) has been permanently separated from employment in a restaurant, bar, or
21.29 lawful gambling organization from October 1, 2007, to October 1, 2009, due to the
21.30 implementation of any state law prohibiting smoking. This clause expires August 1, 2012;

21.31 (6) is a veteran as defined by section 197.447, has been discharged or released from
21.32 active duty under honorable conditions within the last 36 months, and (i) is unemployed
21.33 or (ii) is employed in a job verified to be below the skill level and earning capacity of
21.34 the veteran; ~~or~~

22.1 (7) is an individual determined by the United States Department of Labor to be
22.2 covered by trade adjustment assistance under United States Code, title 19, sections 2271
22.3 to 2331, as amended; or

22.4 ~~(7)~~ (8) is a displaced homemaker. A "displaced homemaker" is an individual who
22.5 has spent a substantial number of years in the home providing homemaking service and
22.6 (i) has been dependent upon the financial support of another; and now due to divorce,
22.7 separation, death, or disability of that person, must find employment to self support; or (ii)
22.8 derived the substantial share of support from public assistance on account of dependents
22.9 in the home and no longer receives such support.

22.10 To be eligible under this clause, the support must have ceased while the worker
22.11 resided in Minnesota.

22.12 (d) "Eligible organization" means a state or local government unit, nonprofit
22.13 organization, community action agency, business organization or association, or labor
22.14 organization.

22.15 (e) "Plant closing" means the announced or actual permanent shutdown of a single
22.16 site of employment, or one or more facilities or operating units within a single site of
22.17 employment.

22.18 (f) "Substantial layoff" means a permanent reduction in the workforce, which is
22.19 not a result of a plant closing, and which results in an employment loss at a single site
22.20 of employment during any 30-day period for at least 50 employees excluding those
22.21 employees that work less than 20 hours per week.

22.22 **EFFECTIVE DATE.** This section is effective the Sunday following final enactment.

22.23 Sec. 2. Minnesota Statutes 2010, section 116L.561, subdivision 7, is amended to read:

22.24 Subd. 7. **Reports.** Each contractor shall report to the commissioner ~~on a quarterly~~
22.25 ~~basis~~ in a format to be determined by the commissioner.

22.26 Data collected on individuals under this subdivision are private data on individuals
22.27 as defined in section 13.02, subdivision 12, except that summary data may be provided
22.28 under section 13.05, subdivision 7.