

State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 2949

03/10/2014 Authored by Persell

The bill was read for the first time and referred to the Committee on Jobs and Economic Development Finance and Policy

A bill for an act

relating to unemployment insurance; making policy and housekeeping changes to the unemployment insurance program; adopting recommendations of the Unemployment Insurance Advisory Council; amending Minnesota Statutes 2012, sections 268.035, subdivisions 2, 4, 11, 12, 20, 22, 29; 268.051, subdivision 4; 268.057, subdivisions 5, 7; 268.0625, subdivision 4; 268.085, subdivisions 3, 4, 6, by adding a subdivision; 268.0865, subdivisions 3, 4; 268.095, subdivision 2; 268.103, subdivision 2a; 268.105, subdivisions 1, 2, 3a, 5, 6; 268.18, subdivision 2b; 268.184, subdivisions 1, 1a; 268.186; 268.196, subdivision 1; 268.215; repealing Minnesota Statutes 2012, section 268.105, subdivision 4; Laws 2005, chapter 112, article 1, section 15; Laws 2008, chapter 363, article 10, section 30; Minnesota Rules, parts 3315.0200, subpart 1; 3315.0203; 3315.0211; 3315.0212; 3315.0213; 3315.0801; 3315.0805; 3315.0810; 3315.0815; 3315.0820; 3315.0825; 3315.0830; 3315.0835; 3315.0840; 3315.0845; 3315.0901; 3315.0905.

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

ARTICLE 1

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL POLICY

Section 1. Minnesota Statutes 2012, section 268.035, subdivision 29, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

(12) the income to a former employee resulting from the exercise of a nonqualified stock option;

(13) payments made to supplement unemployment benefits under a plan established by an employer, that makes provisions for employees generally or for a class or classes of employees under the written terms of an agreement, contract, trust arrangement, or other instrument. The plan must provide supplemental payments solely for the supplementing of weekly state or federal unemployment benefits. The plan must provide supplemental payments only for those weeks the applicant has been paid regular, extended, or additional unemployment benefits. The supplemental payments, when combined with the applicant's weekly unemployment benefits paid, may not exceed the applicant's regular weekly pay. The plan must not allow the assignment of supplemental payments or provide for any type of additional payment. The plan must not require any consideration from the applicant, other than a release of claims, and must not be designed for the purpose of avoiding the payment of Social Security obligations, or unemployment taxes on money disbursed from the plan;

~~(13)~~ (14) sickness or accident disability payments made by the employer after the expiration of six calendar months following the last calendar month that the individual worked for the employer;

~~(14)~~ (15) disability payments made under the provisions of any workers' compensation law;

~~(15)~~ (16) sickness or accident disability payments made by a third-party payer such as an insurance company; or

~~(16)~~ (17) payments made into a trust fund, or for the purchase of insurance or an annuity, to provide for sickness or accident disability payments to employees under a plan or system established by the employer that provides for the employer's employees generally or for a class or classes of employees.

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

(c) Wages includes the total payment to the operator and supplier of a vehicle or other equipment where the payment combines compensation for personal services as well as compensation for the cost of operating and hiring the equipment in a single payment.
This paragraph does not apply if:

4.1 (1) there is a preexisting written agreement providing for allocation of specific
4.2 amounts; or

4.3 (2) at the time of each payment there is a written acknowledgement indicating
4.4 the separate allocated amounts.

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

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

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

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

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

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

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

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

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

4.31 Sec. 2. Minnesota Statutes 2012, section 268.051, subdivision 4, is amended to read:

4.32 Subd. 4. **Experience rating history transfer.** (a) The experience rating history of
4.33 the predecessor employer is transferred to the successor employer when:

4.34 (1) a taxing employer acquires all of the organization, trade or business, or
4.35 workforce of another taxing employer; and

(2) there is 25 percent or more common ownership or there is substantially common management or control between the predecessor and successor.

(b) A portion of the experience rating history of the predecessor employer is transferred to the successor employer when:

(1) a taxpaying employer acquires a portion, but less than all, of the organization, trade or business, or workforce of another taxpaying employer; and

(2) there is 25 percent or more common ownership or there is substantially common management or control between the predecessor and successor;

The successor employer acquires, as of the date of acquisition, ~~the experience rating history attributable to the portion it acquired, and the predecessor employer retains the experience rating history attributable to the portion that it has retained. If the commissioner determines that sufficient information is not available to substantiate that a distinct severable portion was acquired and to assign the appropriate distinct severable portion of the experience rating history, the commissioner must assign the successor~~ employer that percentage of the predecessor employer's experience rating history equal to that percentage of the employment positions it has obtained, and the predecessor employer retains that percentage of the experience rating history equal to the percentage of the employment positions it has retained.

(c) Paragraphs (a) and (b) do not require concurrent ownership, management, or control of the predecessor and successor for there to be a transfer, or partial transfer, of the experience rating history.

(d) The term "common ownership" for purposes of this subdivision includes ownership by a spouse, parent, grandparent, child, grandchild, brother, sister, aunt, uncle, niece, nephew, or first cousin, by birth or by marriage.

~~(d)~~ (e) Each successor employer that is subject to paragraph (a) or (b) must notify the commissioner of the acquisition by electronic transmission, in a format prescribed by the commissioner, within 30 calendar days of the date of acquisition. Any successor employer that fails to notify the commissioner is subject to the penalties under section 268.184, subdivision 1a, if the successor's assigned tax rate under subdivision 2 or 5 was lower than the predecessor's assigned tax rate at the time of the acquisition. Payments made toward the penalties are credited to the trust fund.

~~(e)~~ (f) If the successor employer under paragraphs (a) and (b) had an experience rating at the time of the acquisition, the transferred experience rating history of the predecessor is combined with the successor's experience rating history for purposes of recomputing a tax rate.

(f) (g) If there has been a transfer of an experience rating history under paragraph (a) or (b), employment with a predecessor employer is not considered to have been terminated if similar employment is offered by the successor employer and accepted by the employee.

(g) (h) The commissioner, upon notification of an employer, or upon the commissioner's own motion if the employer fails to provide the required notification, must determine if an employer is a successor within the meaning of this subdivision. The commissioner must, after determining the issue of succession or nonsuccession, recompute the tax rate under subdivision 6 of all employers affected. The commissioner must send the recomputed tax rate to all affected employers by mail or electronic transmission. Any affected employer may appeal the recomputed tax rate in accordance with the procedures in subdivision 6, paragraph (c).

(h) (i) The "experience rating history" for purposes of this subdivision and subdivision 4a means the amount of unemployment benefits paid and the taxable wages that are being used and would be used in computing the current and any future experience rating.

For purposes of this chapter, an "acquisition" means anything that results in the obtaining by the successor employer obtaining, in any way or manner, all, or a portion of, the organization, trade or business, or workforce of the predecessor employer.

~~A "distinct severable portion" in paragraph (b) means a location or unit separately identifiable within the employer's wage detail report under section 268.044.~~

(i) (j) Regardless of the ownership, management, or control requirements of paragraph (a), if there is an acquisition or merger of a publicly held corporation by or with another publicly held corporation the experience rating histories of the corporations are combined as of the date of acquisition or merger for the purpose of recomputing a tax rate.

Sec. 3. Minnesota Statutes 2012, section 268.057, subdivision 5, is amended to read:

Subd. 5. **Interest on amounts past due.** If any amounts due from an employer under this chapter or section 116L.20, except late fees under section 268.044, are not received on the date due the unpaid balance bears interest at the rate of one and one-half percent per month or any part thereof of a month. Interest collected under this subdivision is credited to the contingent account.

EFFECTIVE DATE. This section applies to all interest assessed after July 1, 2015.

Sec. 4. Minnesota Statutes 2012, section 268.085, subdivision 3, is amended to read:

Subd. 3. **Payments that delay unemployment benefits.** (a) An applicant is not eligible to receive unemployment benefits for any week with respect to which the applicant

is receiving, has received, or ~~has filed for payment, equal to or in excess of the applicant's weekly unemployment benefit amount, in the form of:~~

~~(1) will receive~~ vacation pay, sick pay, or personal time off pay, also known as "PTO," ~~paid~~

This paragraph only applies upon temporary, indefinite, or seasonal separation. ~~This clause and does not apply to (i) vacation pay, sick pay, or personal time off pay, paid;~~

~~(1) upon a permanent separation from employment; or (ii) vacation pay, sick pay, or personal time off pay, paid~~

~~(2) to payments from a vacation fund administered by a union or a third party not under the control of the employer;~~

Payments under this paragraph are applied to the period immediately following the temporary, indefinite, or seasonal separation.

~~(2) (b) An applicant is not eligible to receive unemployment benefits for any week the applicant is receiving, has received, or will receive severance pay, bonus pay, and or any other payments, except earnings under subdivision 5, and back pay under subdivision 6, paid by an employer because of, upon, or after separation from employment, but~~

This paragraph only applies if the payment is:

(1) considered wages at the time of payment under section 268.035, subdivision 29; or

(2) subject to the Federal Insurance Contributions Act (FICA) tax imposed to fund Social Security and Medicare.

Payments under this paragraph are applied to the period immediately following the later of the date of separation from employment or the date the applicant first becomes aware that the employer will be making a payment. The date the payment is actually made or received, or that an applicant must agree to a release of claims, does not affect the application of this paragraph.

This paragraph does not apply to earnings under subdivision 5, back pay under subdivision 6, or vacation pay, sick pay, or personal time off pay under paragraph (a).

~~(3) (c) An applicant is not eligible to receive unemployment benefits for any week the applicant is receiving, has received, will receive, or has applied for pension, retirement, or annuity payments from any plan contributed to by a base period employer including the United States government, except Social Security benefits that are provided for in subdivision 4. The base period employer is considered to have contributed to the plan if the contribution is excluded from the definition of wages under section 268.035, subdivision 29, clause (1). If the pension, retirement, or annuity payment is paid in a lump sum, an applicant is not considered to have received a payment if:~~

8.1 ~~(i)~~ (1) the applicant immediately deposits that payment in a qualified pension plan
8.2 or account;; or

8.3 ~~(ii)~~ (2) that payment is an early distribution for which the applicant paid an early
8.4 distribution penalty under the Internal Revenue Code, United States Code, title 26, section
8.5 72(t)(1).

8.6 This paragraph does not apply to Social Security benefits under subdivision 4 or 4a.

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

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

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

8.14 For purposes of this paragraph, "last level of regular weekly pay" includes
8.15 commissions, bonuses, and overtime pay if that is part of the applicant's ongoing regular
8.16 compensation.

8.17 ~~(e)~~ (e) Under this subdivision, if the payment with respect to a week is equal to
8.18 or more than the applicant's weekly unemployment benefit amount, the applicant is
8.19 ineligible for benefits for that week. If the payment with respect to a week is less than the
8.20 applicant's weekly unemployment benefit amount, unemployment benefits are reduced
8.21 by the amount of the payment.

8.22 Sec. 5. Minnesota Statutes 2012, section 268.103, subdivision 2a, is amended to read:

8.23 Subd. 2a. **Employer-agent appeals filed online.** (a) If an agent files an appeal on
8.24 behalf of an employer, the appeal must be filed online. The appeal must be filed through
8.25 the electronic address provided on the determination being appealed. Use of another
8.26 method of filing does not constitute an appeal. This paragraph does not apply to:

8.27 (1) an employee filing an appeal on behalf of an employer; or

8.28 (2) an attorney licensed to practice law who is directly representing the employer
8.29 on appeal.

8.30 (b) All information requested when the appeal is filed must be supplied or the
8.31 communication does not constitute an appeal.

8.32 Sec. 6. Minnesota Statutes 2012, section 268.18, subdivision 2b, is amended to read:

8.33 Subd. 2b. **Interest.** (a) On any unemployment benefits fraudulently obtained,
8.34 and any penalty amounts assessed under subdivision 2, the commissioner must assess

interest at the rate of ~~1-1/2~~ one percent per month on any amount that remains unpaid beginning 30 calendar days after the date of the determination of overpayment by fraud. A determination of overpayment by fraud must state that interest will be assessed. Interest is assessed in the same manner as on employer debt under section 268.057, subdivision 5.

~~(b) If the determination did not state that interest will be assessed, interest is assessed beginning 30 calendar days after notification, by mail or electronic transmission, to the applicant that interest is now assessed.~~

(e) Interest payments collected under this section subdivision are credited to the trust fund.

EFFECTIVE DATE. This section applies to interest assessed after July 1, 2015.

Sec. 7. Minnesota Statutes 2012, section 268.186, is amended to read:

268.186 RECORDS; AUDITS.

Subdivision 1. **Employer records; audits.** (a) Each employer must keep true and accurate records ~~for the periods of time and~~ on individuals performing services for the employer, containing the information the commissioner may require ~~by rule.~~ under Minnesota Rules, part 3315.1010. The records must be kept for a period of not less than four years in addition to the current calendar year.

(b) For the purpose of administering this chapter, the commissioner has the power to audit, examine, or cause to be supplied or copied, any books, correspondence, papers, records, or memoranda ~~that are relevant, whether the books, correspondence, papers, records, or memoranda~~ are the property of, or in the possession of ~~the,~~ an employer or any other person at any reasonable time and as often as may be necessary. Subpoenas may be issued under section 268.188, as necessary, for an audit.

~~(b) Any~~ An employer, or other person, that refuses to allow an audit of its records by the department, or that fails to make all necessary records available for audit in Minnesota upon request of the commissioner, may be assessed an administrative penalty of \$500. The penalty collected is credited to the trust fund.

(c) An employer, or other person, that fails to provide a weekly breakdown of money earned by an applicant upon request of the commissioner, information necessary for the detection of applicant fraud under section 268.18, subdivision 2, may be assessed an administrative penalty of \$100. Any notice requesting a weekly breakdown must clearly state that a \$100 penalty may be assessed for failure to provide the information. The penalty collected is credited to the trust fund.

10.1 **Subd. 2. Department records; destruction.** ~~(e) (a)~~ The commissioner may make
10.2 summaries, compilations, ~~photographs~~, duplications, or reproductions of any records,
10.3 ~~or reports pertaining to this chapter~~ that the commissioner considers advisable for the
10.4 preservation of the information. ~~contained therein. Any summaries, compilations,~~
10.5 ~~photographs, duplications, or reproductions is admissible in any proceeding under this~~
10.6 ~~chapter. The commissioner may duplicate records, reports, summaries, compilations,~~
10.7 ~~instructions, determinations, or any other written or recorded matter pertaining to the~~
10.8 ~~administration of this chapter.~~

10.9 ~~(d) (b)~~ Regardless of any law to the contrary, the commissioner may ~~provide for the~~
10.10 ~~destruction of~~ destroy any records, reports, or reproductions, or other papers that are no
10.11 longer necessary for the administration of this chapter, ~~including any required audit.~~ In
10.12 addition, the commissioner may ~~provide for the destruction or disposition of~~ destroy any
10.13 record, report, or other paper from which the information has been electronically captured
10.14 and stored, ~~or that has been photographed, duplicated, or reproduced.~~

10.15 Sec. 8. **EFFECTIVE DATE.**

10.16 Unless otherwise specified, this article is effective the fourth Sunday following final
10.17 enactment and applies to all matters and issues pending determination or decision.

10.18 **ARTICLE 2**

10.19 **UNEMPLOYMENT INSURANCE ADVISORY COUNCIL HOUSEKEEPING**

10.20 Section 1. Minnesota Statutes 2012, section 268.035, subdivision 2, is amended to read:

10.21 Subd. 2. **Agricultural employment.** (a) "Agricultural employment" means
10.22 services; the same as "agricultural labor" defined under United States Code, title 26,
10.23 section 3306, subparagraph (k), of the Federal Unemployment Tax Act and Code of
10.24 Federal Regulations, title 26, section 31.3121(G)-1.

10.25 ~~(1) on a farm, in the employ of any person or family farm corporation in connection~~
10.26 ~~with cultivating the soil, or in connection with raising or harvesting any agricultural or~~
10.27 ~~horticultural commodity, including the raising, shearing, feeding, caring for, training, and~~
10.28 ~~management of livestock, bees, poultry, fur-bearing animals, and wildlife;~~

10.29 ~~(2) in the employ of the owner or tenant or other operator of a farm, in connection~~
10.30 ~~with the operation, management, conservation, improvement, or maintenance of the farm~~
10.31 ~~and its tools and equipment, or in salvaging timber or clearing land of brush and other debris~~
10.32 ~~left by a tornado-like storm, if the major part of the employment is performed on a farm;~~

10.33 ~~(3) in connection with the production or harvesting of any commodity defined as~~
10.34 ~~an agricultural product in United States Code, title 7, section 1626 of the Agricultural~~

~~Marketing Act, or in connection with cotton ginning, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;~~

~~(4) in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if the operator produced more than one-half of the commodity with respect to which the employment is performed, or in the employ of a group of operators of farms or a cooperative organization of which the operators are members, but only if the operators produced more than one-half of the commodity with respect to which the employment is performed; however, this clause is not applicable to employment performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or~~

~~(5) on a farm operated for profit if the employment is not in the course of the employer's trade or business.~~

~~For purposes of this subdivision, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, orchards, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities.~~

(b) For the purposes of this chapter, the term "crew leader" means an individual who:

(1) furnishes workers to be employed in agricultural employment for another person;

and

(2) pays the wages to the worker.

(c) For the purposes of this chapter, a worker who is a member of a crew furnished by a crew leader for another person is an employee of the crew leader if:

(1)(i) the crew leader holds a valid certificate of registration under United States Code, title 29, section 1802, the Migrant and Seasonal Agricultural Worker Protection Act; or (ii) substantially all of the members of the crew operate or maintain any mechanized equipment that is provided by the crew leader; and

(2) the crew leader has not entered into a written agreement with the other person under which the worker is designated as an employee of the other person.

If a worker furnished by a crew leader for another person is not an employee of the crew leader under clauses (1) and (2), the worker is an employee of the other person and the wages paid to the worker are considered paid by the other person.

12.1 Sec. 2. Minnesota Statutes 2012, section 268.035, subdivision 4, is amended to read:

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

12.7 The base period under this paragraph is as follows:

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

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

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

12.28 (c) If the applicant has insufficient wage credits to establish a benefit account under
 12.29 ~~paragraph (a) or (b)~~ a base period of the four most recent completed calendar quarters,
 12.30 or a base period of the first four of the most recent five completed calendar quarters,
 12.31 but during the either base period ~~under paragraph (a) or (b)~~ an the applicant received
 12.32 workers' compensation for temporary disability under chapter 176 or a similar federal law
 12.33 or similar law of another state, or if ~~an the~~ an the applicant whose own serious illness caused a
 12.34 loss of work for which the applicant received compensation for loss of wages from some
 12.35 other source, the applicant may request ~~an extended~~ a base period as follows:

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

(d) If the applicant under paragraph (b) has insufficient wage credits to establish a benefit account ~~using the secondary base period under paragraph (b), an alternate, then a~~ base period of the most recent four completed calendar quarters before the effective date of the applicant's application for unemployment benefits ~~will~~ must 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)~~ this subdivision may include wage credits upon which a prior benefit account was established.

(f) Regardless of paragraph (a), ~~the secondary~~ a base period in paragraph (b) of the first four of the most recent five completed calendar quarters must be used if the applicant ~~has~~ would have more wage credits under that base period than under ~~the primary~~ a base period in paragraph (a) of the four most recent completed calendar quarters.

Sec. 3. Minnesota Statutes 2012, section 268.035, subdivision 11, is amended to read:

Subd. 11. **Covered agricultural employment.** (a) "Covered agricultural employment" means agricultural employment ~~where:~~

~~(1) The employment is performed for a person who:~~

~~(i) (1) during any calendar quarter in either the current or the prior calendar year paid wages of \$20,000 or more to employees in agricultural employment; or~~

~~(ii) (2) in the current or the prior calendar year employed four or more employees who each worked for some portion of a day in each of 20 different calendar weeks, whether or not the weeks were consecutive, in either the current or prior calendar year employed in agricultural employment four or more employees, regardless of whether they were employed at~~ during the same time weeks.

~~(2) Any employee who is a member of a crew furnished by a crew leader to be employed in agricultural employment for any other person is treated as an employee of the crew leader.~~

14.1 ~~(i) if the crew leader holds a valid certificate of registration under United States~~
 14.2 ~~Code, title 29, section 1802, the Migrant and Seasonal Agricultural Worker Protection~~
 14.3 ~~Act; or substantially all of the members of the crew operate or maintain tractors,~~
 14.4 ~~mechanized harvesting or crop dusting equipment, or any other mechanized equipment,~~
 14.5 ~~that is provided by the crew leader; and~~

14.6 ~~(ii) if the employee is not an employee of another person.~~

14.7 ~~(3) Any employee who is furnished by a crew leader to be employed in agricultural~~
 14.8 ~~employment for any other person and who is not treated as an employee of the crew~~
 14.9 ~~leader under clause (2):~~

14.10 ~~(i) the other person and not the crew leader is treated as the employer of the~~
 14.11 ~~employee; and~~

14.12 ~~(ii) the other person is treated as having paid wages to the employee in an amount~~
 14.13 ~~equal to the amount of wages paid to the employee by the crew leader (either on the~~
 14.14 ~~crew leader's behalf or on behalf of the other person) for the agricultural employment~~
 14.15 ~~performed for the other person.~~

14.16 ~~(4) The term "crew leader" means an individual who:~~

14.17 ~~(i) furnishes employees to be employed in agricultural employment for any other~~
 14.18 ~~person;~~

14.19 ~~(ii) pays (either on the crew leader's own behalf or on behalf of the other person)~~
 14.20 ~~the employees furnished by the crew leader for the agricultural employment performed~~
 14.21 ~~by them; and~~

14.22 ~~(iii) has not entered into a written agreement with the other person under which the~~
 14.23 ~~furnished employee is designated as an employee of the other person.~~

14.24 ~~(5) (b) Employment of an officer or shareholder of a family farm corporation is~~
 14.25 ~~excluded from covered agricultural employment unless the corporation is an employer~~
 14.26 ~~under United States Code, title 26, section 3306(a)(2) of the Federal Unemployment~~
 14.27 ~~Tax Act.~~

14.28 ~~(6) and employment of an individual 16 years of age or under is excluded from~~
 14.29 ~~included in covered agricultural employment unless only if the employer is an employer~~
 14.30 ~~under United States Code, title 26, section 3306(a)(2) of the Federal Unemployment~~
 14.31 ~~Tax Act.~~

14.32 Sec. 4. Minnesota Statutes 2012, section 268.035, subdivision 12, is amended to read:

14.33 Subd. 12. **Covered employment.** (a) "Covered employment" means the following
 14.34 unless excluded as "noncovered employment" under subdivision 20:

14.35 (1) an employee's entire employment during the calendar quarter if:

- 15.1 ~~(i) the employment is performed entirely in Minnesota;~~
15.2 ~~(ii) (i) the employment during the quarter is performed primarily in Minnesota;~~
15.3 ~~and the employment performed outside Minnesota is incidental to the employment in~~
15.4 ~~Minnesota; or;~~
15.5 ~~(iii) (ii) the employment during the quarter is not performed primarily in Minnesota~~
15.6 ~~or any one other state but some of the employment is performed in Minnesota and the~~
15.7 ~~base of operations or the place from which the employment is directed or controlled~~
15.8 ~~is in Minnesota; or~~
15.9 ~~(iii) the employment during the quarter is not performed primarily in Minnesota~~
15.10 ~~or any other state and the base of operations or place from which the employment is~~
15.11 ~~directed or controlled is not in any state where part of the employment is performed, but~~
15.12 ~~the employee's residence is in Minnesota;~~
15.13 (2) an employee's entire employment during the calendar quarter ~~wherever~~
15.14 performed within the United States or Canada, if:
15.15 (i) the employment is not considered covered employment under the unemployment
15.16 insurance program of any other state, federal law, or the law of Canada; and
15.17 (ii) the place from which the employment is directed or controlled is in Minnesota;
15.18 (3) the employment during the calendar quarter ~~of,~~ performed entirely outside of
15.19 the United States and Canada, by an employee who is a United States citizen of the
15.20 United States, performed outside the United States, except in Canada, in the employ of
15.21 an American employer if:
15.22 ~~(i) the employer's principal place of business in the United States is located in~~
15.23 ~~Minnesota;~~
15.24 ~~(ii) the employer has no place of business in the United States, but the employer~~
15.25 ~~is an individual who is a resident of Minnesota, or the employer is a corporation that is~~
15.26 ~~organized under the laws of Minnesota, or the employer is a partnership or a trust and the~~
15.27 ~~number of partners or trustees who are residents of Minnesota is greater than the number~~
15.28 ~~who are residents of any one other state;~~
15.29 ~~(iii) none of the criteria of items (i) and (ii) is met but the employer has elected~~
15.30 ~~coverage in Minnesota, or the employer having failed to elect coverage in any state,~~
15.31 ~~an applicant has made an application for unemployment benefits under section 268.07,~~
15.32 ~~based on the employment;~~
15.33 ~~(iv) An "American employer," for the purposes of this subdivision clause, means a~~
15.34 corporation organized under the laws of any state, an individual who is a resident of
15.35 the United States, or a partnership if two-thirds or more of the partners are residents of

the United States, or a trust, if all of the trustees are residents of the United States, ~~or a corporation organized under the laws of the United States, or of any state; or, and~~

~~(v) as used in this subdivision, the term "United States" includes the states, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands;~~

(4) all employment during the calendar quarter performed by an officer or member of the crew of an American vessel on or in connection with the vessel, if the operating office from which the operations of the vessel operating on navigable waters within, or within and without, the United States are ordinarily and regularly supervised, managed, directed, and controlled is in Minnesota; ~~and.~~

(b) "Covered employment" includes covered agricultural employment under subdivision 11.

~~(5) (c)~~ For the purposes of satisfying the period of ineligibility under section 268.095, subdivision 10, "covered employment" includes covered employment under an unemployment insurance program:

(1) of any other state or employment covered under an unemployment insurance program; or

(2) established by an act of Congress.

Sec. 5. Minnesota Statutes 2012, 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;

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

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

(6) employment covered by a reciprocal arrangement between the commissioner and another state or the federal government that provides that all employment performed by an

17.1 individual for an employer during the period covered by the reciprocal arrangement is
17.2 considered performed entirely within another state;

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

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

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

17.23 (10) employment of an individual receiving work relief or work training as part of
17.24 an unemployment work relief or work training program assisted or financed in whole or
17.25 in part by any federal agency or an agency of a state or political subdivision thereof.
17.26 This clause applies only to employment for Minnesota or a political subdivision or an
17.27 organization described in United States Code, title 26, section 501(c)(3) of the federal
17.28 Internal Revenue Code and exempt from income tax under section 501(a). This clause does
17.29 not apply to programs that require unemployment benefit coverage for the participants;

17.30 (11) employment for Minnesota or a political subdivision as an elected official, a
17.31 member of a legislative body, or a member of the judiciary;

17.32 (12) employment as a member of the Minnesota National Guard or Air National
17.33 Guard;

17.34 (13) employment for Minnesota, a political subdivision, or instrumentality thereof,
17.35 as an employee serving only on a temporary basis in case of fire, flood, tornado, or
17.36 similar emergency;

18.1 (14) employment as an election official or election worker for Minnesota or a
18.2 political subdivision, but only if the compensation for that employment was less than
18.3 \$1,000 in a calendar year;

18.4 (15) employment for Minnesota that is a major policy-making or advisory position
18.5 in the unclassified service;

18.6 (16) employment for Minnesota in an unclassified position established under section
18.7 43A.08, subdivision 1a;

18.8 (17) employment for a political subdivision of Minnesota that is a nontenured major
18.9 policy making or advisory position;

18.10 (18) domestic employment in a private household, local college club, or local
18.11 chapter of a college fraternity or sorority performed for a person, only if the wages paid
18.12 in any calendar quarter in either the current or prior calendar year to all individuals in
18.13 domestic employment totaled less than \$1,000.

18.14 "Domestic employment" includes all service in the operation and maintenance of a
18.15 private household, for a local college club, or local chapter of a college fraternity or
18.16 sorority as distinguished from service as an employee in the pursuit of an employer's
18.17 trade or business;

18.18 (19) employment of an individual by a son, daughter, or spouse, and employment of
18.19 a child under the age of 18 by the child's father or mother;

18.20 ~~(20) employment of an individual who provides direct care to an immediate family~~
18.21 ~~member funded through the personal care assistance program under section 256B.0659;~~

18.22 ~~(21)~~ (20) employment of an inmate of a custodial or penal institution;

18.23 ~~(22)~~ (21) employment for a school, college, or university by a student who is
18.24 enrolled and whose primary relation to the school, college, or university is as a student.
18.25 This does not include an individual whose primary relation to the school, college, or
18.26 university is as an employee who also takes courses;

18.27 ~~(23)~~ (22) employment of an individual who is enrolled as a student in a full-time
18.28 program at a nonprofit or public educational institution that maintains a regular faculty
18.29 and curriculum and has a regularly organized body of students in attendance at the place
18.30 where its educational activities are carried on, taken for credit at the institution, that
18.31 combines academic instruction with work experience, if the employment is an integral
18.32 part of the program, and the institution has so certified to the employer, except that this
18.33 clause does not apply to employment in a program established for or on behalf of an
18.34 employer or group of employers;

19.1 ~~(24)~~ (23) employment of university, college, or professional school students in an
19.2 internship or other training program with the city of St. Paul or the city of Minneapolis
19.3 under Laws 1990, chapter 570, article 6, section 3;

19.4 ~~(25)~~ (24) employment for a hospital by a patient of the hospital. "Hospital" means
19.5 an institution that has been licensed by the Department of Health as a hospital;

19.6 ~~(26)~~ (25) employment as a student nurse for a hospital or a nurses' training school by
19.7 an individual who is enrolled and is regularly attending classes in an accredited nurses'
19.8 training school;

19.9 ~~(27)~~ (26) employment as an intern for a hospital by an individual who has completed
19.10 a four-year course in an accredited medical school;

19.11 ~~(28)~~ (27) employment as an insurance salesperson, by other than a corporate
19.12 officer, if all the wages from the employment is solely by way of commission. The word
19.13 "insurance" includes an annuity and an optional annuity;

19.14 ~~(29)~~ (28) employment as an officer of a township mutual insurance company or
19.15 farmer's mutual insurance company operating under chapter 67A;

19.16 ~~(30)~~ (29) employment of a corporate officer, if the officer directly or indirectly,
19.17 including through a subsidiary or holding company, owns 25 percent or more of the
19.18 employer corporation, and employment of a member of a limited liability company, if the
19.19 member directly or indirectly, including through a subsidiary or holding company, owns
19.20 25 percent or more of the employer limited liability company;

19.21 ~~(31)~~ (30) employment as a real estate salesperson, by other than a corporate officer,
19.22 if all the wages from the employment is solely by way of commission;

19.23 ~~(32)~~ (31) employment as a direct seller as defined in United States Code, title 26,
19.24 section 3508;

19.25 ~~(33)~~ (32) employment of an individual under the age of 18 in the delivery or
19.26 distribution of newspapers or shopping news, not including delivery or distribution to any
19.27 point for subsequent delivery or distribution;

19.28 ~~(34)~~ (33) casual employment performed for an individual, other than domestic
19.29 employment under clause (18), that does not promote or advance that employer's trade or
19.30 business;

19.31 ~~(35)~~ (34) employment in "agricultural employment" unless considered "covered
19.32 agricultural employment" under subdivision 11; or

19.33 ~~(36)~~ (35) if employment during one-half or more of any pay period was covered
19.34 employment, all the employment for the pay period is considered covered employment;
19.35 but if during more than one-half of any pay period the employment was noncovered
19.36 employment, then all of the employment for the pay period is considered noncovered

employment. "Pay period" means a period of not more than a calendar month for which a payment or compensation is ordinarily made to the employee by the employer.

Sec. 6. Minnesota Statutes 2012, section 268.035, subdivision 22, is amended to read:

Subd. 22. **State and United States.** "State" and "United States" includes, in addition to the states of the United States, the Commonwealth of Puerto Rico, the District of Columbia, and the Virgin Islands.

Sec. 7. Minnesota Statutes 2012, section 268.057, subdivision 7, is amended to read:

Subd. 7. **Credit adjustments, refunds.** (a) If an employer makes an application for a credit adjustment of any amount paid under this chapter or section 116L.20 within four years of the date that the payment was due, in a manner and format prescribed by the commissioner, and the commissioner determines that the payment or any portion was erroneous, the commissioner must make an adjustment and issue a credit without interest. If a credit cannot be used, the commissioner must refund, without interest, the amount erroneously paid. The commissioner, on the commissioner's own motion, may make a credit adjustment or refund under this subdivision.

Any refund returned to the commissioner is considered unclaimed property under chapter 345.

(b) If a credit adjustment or refund is denied in whole or in part, a ~~notice~~ determination of denial must be sent to the employer by mail or electronic transmission. The ~~notice~~ determination of denial is final unless an employer files an appeal within 20 calendar days after sending. Proceedings on the appeal are conducted in accordance with section 268.105.

Sec. 8. Minnesota Statutes 2012, section 268.0625, subdivision 4, is amended to read:

Subd. 4. **~~Notice~~ Determination and right to hearing.** At least 30 calendar days before the commissioner notifies a licensing authority, a ~~notice~~ determination of action under this section must be sent to the licensee by mail or electronic transmission. If the licensee disputes the action, the licensee must appeal within 20 calendar days after the sending of the ~~notice~~ determination to the licensee. The only issue on any appeal is whether the commissioner has complied with the requirements of this section. Proceedings on the appeal are conducted in accordance with section 268.105.

Sec. 9. Minnesota Statutes 2012, section 268.085, subdivision 4, is amended to read:

Subd. 4. **Social Security old age insurance benefits.** (a) Any applicant aged 62 or over is required to state when filing an application for unemployment benefits and

21.1 when filing continued requests for unemployment benefits if the applicant is receiving,
21.2 has filed for, or intends to file for, primary Social Security old age benefits ~~for any week~~
21.3 ~~during the benefit year.~~

21.4 Unless paragraph (b) applies, 50 percent of the weekly equivalent of the primary
21.5 Social Security old age benefit the applicant has received, has filed for, or intends to file
21.6 for, with respect to that week must be deducted from an applicant's weekly unemployment
21.7 benefit amount.

21.8 (b) If all of the applicant's wage credits were earned while the applicant was claiming
21.9 Social Security old age benefits, there is no deduction from the applicant's weekly
21.10 unemployment benefit amount. ~~The purpose of this paragraph is to ensure that an applicant~~
21.11 ~~who is claiming Social Security benefits has demonstrated a desire and ability to work.~~

21.12 (c) Information from the Social Security Administration is considered conclusive,
21.13 absent specific evidence showing that the information was erroneous.

21.14 (d) This subdivision does not apply to Social Security survivor benefits.

21.15 ~~(e) An applicant who is receiving, has received, or has filed for primary Social~~
21.16 ~~Security disability benefits for any week during the benefit year must be determined~~
21.17 ~~unavailable for suitable employment for that week, unless:~~

21.18 ~~(1) the Social Security Administration approved the collecting of primary Social~~
21.19 ~~Security disability benefits each month the applicant was employed during the base~~
21.20 ~~period; or~~

21.21 ~~(2) the applicant provides a statement from an appropriate health care professional~~
21.22 ~~who is aware of the applicant's Social Security disability claim and the basis for that claim,~~
21.23 ~~certifying that the applicant is available for suitable employment.~~

21.24 ~~If an applicant meets the requirements of clause (1) there is no deduction from the~~
21.25 ~~applicant's weekly benefit amount for any Social Security disability benefits. If only~~
21.26 ~~clause (2) applies, then there must be deducted from the applicant's weekly unemployment~~
21.27 ~~benefit amount 50 percent of the weekly equivalent of the primary Social Security~~
21.28 ~~disability benefits the applicant is receiving, has received, or has filed for, with respect~~
21.29 ~~to that week; provided, however, that if the Social Security Administration determines~~
21.30 ~~that an individual is not entitled to receive primary Social Security disability benefits for~~
21.31 ~~any week the applicant has applied for those benefits, the 50 percent deduction does not~~
21.32 ~~apply to that week.~~

21.33 ~~(d) Information from the Social Security Administration is considered conclusive,~~
21.34 ~~absent specific evidence showing that the information was erroneous.~~

21.35 ~~(e) This subdivision does not apply to Social Security survivor benefits.~~

22.1 **EFFECTIVE DATE.** The amendment to paragraph (b) is effective the day
22.2 following final enactment.

22.3 Sec. 10. Minnesota Statutes 2012, section 268.085, is amended by adding a subdivision
22.4 to read:

22.5 Subd. 4a. **Social Security disability benefits.** (a) An applicant who is receiving,
22.6 has received, or has filed for primary Social Security disability benefits for any week is
22.7 ineligible for unemployment benefits for that week, unless:

22.8 (1) the Social Security Administration approved the collecting of primary Social
22.9 Security disability benefits each month the applicant was employed during the base
22.10 period; or

22.11 (2) the applicant provides a statement from an appropriate health care professional
22.12 who is aware of the applicant's Social Security disability claim and the basis for that claim,
22.13 certifying that the applicant is available for suitable employment.

22.14 (b) If an applicant meets the requirements of paragraph (a), clause (1), there is no
22.15 deduction from the applicant's weekly benefit amount for any Social Security disability
22.16 benefits.

22.17 (c) If an applicant meets the requirements of paragraph (a), clause (2), there must
22.18 be deducted from the applicant's weekly unemployment benefit amount 50 percent of
22.19 the weekly equivalent of the primary Social Security disability benefits the applicant is
22.20 receiving, has received, or has filed for, with respect to that week.

22.21 If the Social Security Administration determines that the applicant is not entitled to
22.22 receive primary Social Security disability benefits for any week the applicant has applied
22.23 for those benefits, then this paragraph does not apply to that week.

22.24 (d) Information from the Social Security Administration is considered conclusive,
22.25 absent specific evidence showing that the information was erroneous.

22.26 (e) This subdivision does not apply to Social Security survivor benefits.

22.27 Sec. 11. Minnesota Statutes 2012, section 268.085, subdivision 6, is amended to read:

22.28 **Subd. 6. Receipt of back pay.** (a) Back pay received by an applicant within 24
22.29 months of the establishment of the benefit account with respect to any week ~~occurring~~
22.30 ~~during the benefit year~~ must be deducted from unemployment benefits paid for that week,
22.31 and the applicant is considered to have been overpaid the unemployment benefits under
22.32 section 268.18, subdivision 1.

22.33 If the back pay is not paid with respect to a specific period, the back pay must be
22.34 applied to the period immediately following the last day of employment.

(b) If the back pay is reduced by the amount of unemployment benefits that have been paid, the amount of back pay withheld and not paid the applicant must be:

(1) paid by the taxpaying or reimbursing employer to the trust fund within 30 calendar days and is subject to the same collection procedures that apply to past due taxes and reimbursements; and

(2) when received by the trust fund:

(i) an overpayment of unemployment benefits must be created which, under section 268.047, subdivision 2, clause (8), clears the employer's tax or reimbursable account of any effect; and

(ii) the back pay must then be applied to the unemployment benefit overpayments resulting from the payment of the back pay; and overpayment, eliminating any effect on the applicant.

~~(3) credited to the maximum amount of unemployment benefits available to the applicant in a benefit year that includes the weeks for which back pay was deducted.~~

~~(e) Unemployment benefits paid the applicant must be removed from the computation of the tax rate for taxpaying employers and removed from the reimbursable account for nonprofit and government employers that have elected to be liable for reimbursements in the calendar quarter the trust fund receives payment.~~

~~(d) Payments to the trust fund under this subdivision are considered as made by the applicant.~~

(c) The following must result when applying paragraph (b):

(1) an employer neither overpays nor underpays the employer's proper portion of the unemployment benefit costs; and

(2) the applicant is placed in the same position as never having been paid the unemployment benefits.

(d) This subdivision applies to payments labeled front pay, settlement pay, and other terms describing or dealing with wage loss.

Sec. 12. Minnesota Statutes 2012, section 268.0865, subdivision 3, is amended to read:

Subd. 3. **Continued request for unemployment benefits by electronic transmission.** (a) A continued request for unemployment benefits by electronic transmission must be filed to that electronic mail address, telephone number, or Internet address prescribed by the commissioner for that applicant. In order to constitute a continued request, all information asked for, including information authenticating that the applicant is sending the transmission, must be provided in the format required. If all of the

24.1 information asked for is not provided, the communication does not constitute a continued
24.2 request for unemployment benefits.

24.3 (b) The electronic transmission communication must be filed ~~on the date and during~~
24.4 ~~the time of day designated for the applicant for filing a continued request by electronic~~
24.5 ~~transmission~~ during the week following the week for which payment is requested.

24.6 (c) If the electronic transmission continued request is not filed ~~on the date and~~
24.7 ~~during the time of day designated~~ as required under paragraph (b), a continued request
24.8 by electronic transmission must be accepted if the applicant files the continued request
24.9 by electronic transmission within ~~two~~ three calendar weeks following the week ~~in which~~
24.10 ~~the date designated occurred~~ for which payment is requested. If the continued request by
24.11 electronic transmission is not filed within ~~two~~ three calendar weeks following the week
24.12 ~~in which the date designated occurred~~ for which payment is requested, the electronic
24.13 continued request will not be accepted and the applicant is ineligible for unemployment
24.14 benefits for the period covered by the continued request, unless the applicant shows good
24.15 cause for failing to file the continued request by electronic transmission within the time
24.16 period required.

24.17 Sec. 13. Minnesota Statutes 2012, section 268.0865, subdivision 4, is amended to read:

24.18 Subd. 4. **Continued request for unemployment benefits by mail.** (a) A
24.19 continued request for unemployment benefits by mail must be on a form prescribed by
24.20 the commissioner. The form, in order to constitute a continued request, must be totally
24.21 completed and signed by the applicant. The form must be filed ~~on the date required for the~~
24.22 ~~applicant for filing a continued request~~ by mail, in an envelope with postage prepaid, and
24.23 sent to the address designated during the week following the week for which payment is
24.24 requested.

24.25 (b) If the mail continued request for unemployment benefits is not filed ~~on the date~~
24.26 ~~designated~~ as required under paragraph (a), a continued request must be accepted if the
24.27 form is filed by mail within ~~two~~ three calendar weeks following the week ~~in which the date~~
24.28 ~~designated occurred~~ for which payment is requested. If the form is not filed within ~~two~~
24.29 three calendar weeks following the week ~~in which the date designated occurred~~ for which
24.30 payment is requested, the form will not be accepted and the applicant is ineligible for
24.31 unemployment benefits for the period covered by the continued request for unemployment
24.32 benefits, unless the applicant shows good cause for failing to file the form by mail within
24.33 the time period required.

24.34 (c) If the applicant has been designated to file a continued request for unemployment
24.35 benefits by mail, an applicant may submit the form by facsimile transmission ~~on the day~~

25.1 ~~otherwise required for mailing, or within two~~ three calendar weeks following the week in
25.2 ~~which the date designated occurred~~ for which payment is requested. A form submitted by
25.3 facsimile transmission must be sent only to the telephone number assigned for that purpose.

25.4 (d) An applicant who has been designated to file a continued request by mail may
25.5 personally deliver a continued request form only to the location to which the form was
25.6 otherwise designated to be mailed.

25.7 Sec. 14. Minnesota Statutes 2012, section 268.095, subdivision 2, is amended to read:

25.8 Subd. 2. **Quit defined.** (a) A quit from employment occurs when the decision to end
25.9 the employment was, at the time the employment ended, the employee's.

25.10 (b) An employee who has been notified that the employee will be discharged in the
25.11 future, who chooses to end the employment while employment in any capacity is still
25.12 available, is considered to have quit the employment.

25.13 (c) An employee who seeks to withdraw a previously submitted notice of quitting
25.14 is considered to have quit the employment, as of the intended date of quitting, if the
25.15 employer does not agree that the notice may be withdrawn.

25.16 (d) An applicant who, within five calendar days after completion of a suitable job
25.17 assignment from a staffing service (1) fails without good cause to affirmatively request an
25.18 additional suitable job assignment, (2) refuses without good cause an additional suitable
25.19 job assignment offered, or (3) accepts employment with the client of the staffing service, is
25.20 considered to have quit employment with the staffing service. Accepting employment with
25.21 the client of the staffing service meets the requirements of the exception to ineligibility
25.22 under subdivision 1, clause (2).

25.23 This paragraph applies only if, at the time of beginning of employment with the
25.24 staffing service, the applicant signed and was provided a copy of a separate document
25.25 written in clear and concise language that informed the applicant of this paragraph and
25.26 that unemployment benefits may be affected.

25.27 For purposes of this paragraph, "good cause" is a reason that is significant and would
25.28 compel an average, reasonable worker, who would otherwise want an additional suitable
25.29 job assignment with the staffing service (1) to fail to contact the staffing service, or (2)
25.30 to refuse an offered assignment.

25.31 Sec. 15. Minnesota Statutes 2012, section 268.105, subdivision 1, is amended to read:

25.32 Subdivision 1. **Evidentiary Hearing by unemployment law judge.** (a) Upon a
25.33 timely appeal to a determination having been filed, ~~the department must send, by mail or~~
25.34 ~~electronic transmission, a notice of appeal to all involved parties that an appeal has been~~

26.1 ~~filed, and that a de novo due process evidentiary hearing will be scheduled. The notice~~
26.2 ~~must set out the parties' rights and responsibilities regarding the hearing. The notice must~~
26.3 ~~explain that the facts will be determined by the unemployment law judge based upon a~~
26.4 ~~preponderance of the evidence. The notice must explain in clear and simple language the~~
26.5 ~~meaning of the term "preponderance of the evidence." The department or upon a referral~~
26.6 ~~for direct hearing under section 268.101, subdivision 3a, the chief unemployment law~~
26.7 ~~judge must set a time and place date for a de novo due process evidentiary hearing and~~
26.8 ~~send notice to any involved applicant and any involved employer, by mail or electronic~~
26.9 ~~transmission, not less than ten calendar days before the date of the hearing.~~

26.10 (b) ~~The evidentiary hearing is conducted by an unemployment law judge as an~~
26.11 ~~evidence gathering inquiry. At the beginning of the hearing the unemployment law judge~~
26.12 ~~must fully explain how the hearing will be conducted, that the applicant has the right to~~
26.13 ~~request that the hearing be rescheduled so that documents or witnesses can be subpoenaed,~~
26.14 ~~that the facts will be determined based on a preponderance of the evidence, and, in~~
26.15 ~~clear and simple language, the meaning of the term "preponderance of the evidence."~~
26.16 ~~The unemployment law judge must ensure that all relevant facts are clearly and fully~~
26.17 ~~developed. The department may adopt rules on evidentiary procedures for hearings under~~
26.18 ~~Minnesota Rules, chapter 3310. The rules need not conform to common law or statutory~~
26.19 ~~rules of evidence and other technical rules of procedure.~~

26.20 (c) ~~The department chief unemployment law judge has discretion regarding the~~
26.21 ~~method by which the evidentiary hearing is conducted. A report of any employee of the~~
26.22 ~~department, except a determination, made in the regular course of the employee's duties, is~~
26.23 ~~competent evidence of the facts contained in it. An affidavit or written statement based on~~
26.24 ~~personal knowledge and signed under penalty of perjury is competent evidence of the facts~~
26.25 ~~contained in it; however, the veracity of statements contained within the document or the~~
26.26 ~~credibility of the witness making the statement may be disputed with other documents or~~
26.27 ~~testimony and production of such documents or testimony may be compelled by subpoena.~~

26.28 (e) (d) ~~After the conclusion of the hearing, upon the evidence obtained, the~~
26.29 ~~unemployment law judge must make written findings of fact, reasons for decision, and~~
26.30 ~~decision and send those, by mail or electronic transmission, to all involved parties. When~~
26.31 ~~the credibility of an involved party or a witness testifying in an evidentiary a hearing has a~~
26.32 ~~significant effect on the outcome of a decision, the unemployment law judge must set out~~
26.33 ~~the reason for crediting or discrediting that testimony. The unemployment law judge's~~
26.34 ~~decision is final unless a request for reconsideration is filed under subdivision 2.~~

26.35 (d) ~~Regardless of paragraph (e), (c)~~ If the appealing party fails to participate in the
26.36 ~~evidentiary~~ hearing, the unemployment law judge has the discretion to dismiss the appeal

by summary ~~order~~ decision. By failing to participate, the appealing party is considered to have failed to exhaust available administrative remedies unless the appealing party files a request for reconsideration under subdivision 2 and establishes good cause for failing to participate in the ~~evidentiary~~ hearing ~~under subdivision 2, paragraph (d)~~. Submission of a written statement does not constitute participation. The applicant must participate personally and appearance solely by a representative does not constitute participation.

(f) The unemployment law judge must issue a decision dismissing the appeal as untimely if the judge decides the appeal was not filed within 20 calendar days after the sending of the determination. The unemployment law judge may dismiss the appeal by summary decision, or the judge may conduct a hearing to obtain evidence on the timeliness of the appeal.

(g) Decisions of an unemployment law judge are not precedential.

~~(e)~~ (h) Only employees of the department who are attorneys licensed to practice law in Minnesota may serve as the chief unemployment law judge, senior unemployment law judges who are supervisors, or unemployment law judges. The commissioner must designate a chief unemployment law judge.

(i) The chief unemployment law judge must assign an unemployment law judge to conduct a hearing and may transfer to another unemployment law judge any proceedings pending before an unemployment law judge.

~~(f)~~ (j) A full-time unemployment law judge must be paid a salary within a range directly tied to the salary set under section 15A.083, subdivision 7, for a workers' compensation judge. The salary paid within that range to any single unemployment law judge is based on experience and performance.

Sec. 16. Minnesota Statutes 2012, section 268.105, subdivision 2, is amended to read:

Subd. 2. **Request for reconsideration.** (a) Any ~~involved applicant, involved employer party,~~ or the commissioner, may, within 20 calendar days of the sending of the unemployment law judge's decision under subdivision ~~1~~ 1a, file a request for reconsideration asking the ~~unemployment law~~ judge to reconsider that decision. ~~Section 268.103 applies to a request for reconsideration. If a request for reconsideration is timely filed, the unemployment law judge must issue an order:~~

~~(1) modifying the findings of fact and decision issued under subdivision 1;~~

~~(2) setting aside the decision issued under subdivision 1 and directing that an additional evidentiary hearing be conducted under subdivision 1; or~~

~~(3) affirming the findings of fact and decision issued under subdivision 1.~~

(b) Upon a ~~timely~~ request for reconsideration having been filed, the ~~department~~ chief unemployment law judge must send a notice, by mail or electronic transmission, to all ~~involved~~ parties that a request for reconsideration has been filed. The notice must inform the ~~involved~~ parties:

(1) that reconsideration is the procedure for the unemployment law judge to correct any factual or legal mistake in the decision, or to order an additional hearing when appropriate;

(2) of the opportunity to provide comment on the request for reconsideration, and the right under subdivision 5 to obtain a copy of any recorded testimony and exhibits offered or received into evidence at the evidentiary hearing;

~~(2)~~ (3) that providing specific comments as to a perceived factual or legal error mistake in the decision, or a perceived error mistake in procedure during the evidentiary hearing, will assist the unemployment law judge in deciding the request for reconsideration;

~~(3)~~ (4) of the right to obtain any comments and submissions provided by the any other involved party regarding the request for reconsideration; and

~~(4)~~ (5) of the provisions of paragraph (c) regarding additional evidence.

This paragraph does not apply if paragraph (d) is applicable. Sending the notice does not mean the unemployment law judge has decided the request for reconsideration was timely filed.

(c) In deciding a request for reconsideration, the unemployment law judge must not, ~~except for purposes of determining whether to order an additional evidentiary hearing,~~ consider any evidence that was not submitted at the ~~evidentiary hearing conducted under subdivision 1,~~ except for purposes of determining whether to order an additional hearing.

The unemployment law judge must order an additional ~~evidentiary~~ hearing if an ~~involved~~ a party shows that evidence which was not submitted at the ~~evidentiary~~ hearing:

(1) would likely change the outcome of the decision and there was good cause for not having previously submitted that evidence; or

(2) would show that the evidence that was submitted at the ~~evidentiary~~ hearing was likely false and that the likely false evidence had an effect on the outcome of the decision.

(d) If the ~~involved applicant or involved employer party~~ party who filed the request for reconsideration failed to participate in the ~~evidentiary hearing conducted under subdivision 1,~~ the unemployment law judge must issue an order setting aside the decision and directing that ordering an additional evidentiary hearing be conducted must be issued if the party who failed to participate had good cause for failing to do so. ~~In the notice that a request for reconsideration has been filed,~~ The party who failed to participate in the hearing must be informed of the requirement, ~~and provided the opportunity,~~ to show

29.1 good cause for failing to participate. If the unemployment law judge determines that good
29.2 cause for failure to participate has not been shown, the ~~unemployment law~~ judge must
29.3 state that in the ~~order~~ decision issued under paragraph ~~(a)~~ (f).

29.4 Submission of a written statement at the ~~evidentiary~~ hearing ~~under subdivision 1~~
29.5 does not constitute participation for purposes of this paragraph.

29.6 ~~All involved parties must be informed of this paragraph with the notice of appeal~~
29.7 ~~and notice of hearing provided for in subdivision 1.~~

29.8 "Good cause" for purposes of this paragraph is a reason that would have prevented a
29.9 reasonable person acting with due diligence from participating at in the ~~evidentiary~~ hearing.

29.10 (e) A request for reconsideration must be decided by the unemployment law judge
29.11 who issued the decision under subdivision ~~1~~ 1a unless that ~~unemployment law~~ judge:

29.12 (1) is no longer employed by the department;

29.13 (2) is on an extended or indefinite leave; or

29.14 ~~(3) has been disqualified from the proceedings on the judge's own motion; or~~

29.15 ~~(4)~~ (3) has been removed from the proceedings by the chief unemployment law judge.

29.16 (f) If a request for reconsideration is timely filed, the unemployment law judge
29.17 must issue:

29.18 (1) a decision affirming the findings of fact, reasons for decision, and decision
29.19 issued under subdivision 1a;

29.20 (2) a decision modifying the findings of fact, reasons for decision, and decision
29.21 under subdivision 1a; or

29.22 (3) an order setting aside the findings of fact, reasons for decision, and decision
29.23 issued under subdivision 1a, and ordering an additional hearing.

29.24 The unemployment law judge must issue a decision dismissing the request for
29.25 reconsideration as untimely if the judge decides the request for reconsideration was not
29.26 filed within 20 calendar days after the sending of the decision under subdivision 1a.

29.27 The unemployment law judge must send to ~~any involved applicant or involved~~
29.28 ~~employer~~ all parties, by mail or electronic transmission, the decision or order issued
29.29 under this subdivision. ~~An order~~ A decision affirming or modifying the previously
29.30 issued findings of fact, reasons for decision, and decision ~~or an order affirming the~~
29.31 ~~previously issued findings of fact and decision~~, or a decision dismissing the request for
29.32 reconsideration as untimely, is the final ~~department~~ decision on the matter and is ~~final and~~
29.33 binding on the ~~involved applicant and involved employer parties~~ unless judicial review is
29.34 sought under subdivision 7.

29.35 Sec. 17. Minnesota Statutes 2012, section 268.105, subdivision 3a, is amended to read:

30.1 Subd. 3a. **Effect of decisions.** (a) If an unemployment law judge's decision ~~or order~~
30.2 allows unemployment benefits to an applicant, the ~~unemployment~~ benefits must be paid
30.3 regardless of any request for reconsideration or ~~any appeal~~ petition to the Minnesota
30.4 Court of Appeals ~~having been filed~~.

30.5 (b) If an unemployment law judge's decision ~~or order~~ modifies or reverses a
30.6 determination that allowed unemployment benefits, or on reconsideration the decision
30.7 modifies or reverses a prior decision of the unemployment law judge, allowing
30.8 unemployment that allowed benefits to an applicant, any benefits paid in accordance with
30.9 the determination, or prior decision of the unemployment law judge, is ~~are~~ considered
30.10 an overpayment of those unemployment benefits. A decision ~~or order~~ issued under this
30.11 section that results in an overpayment of unemployment benefits must set out the amount
30.12 of the overpayment and the requirement under section 268.18, subdivision 1, that the
30.13 ~~overpaid unemployment~~ benefits must be repaid.

30.14 (c) If an unemployment law judge's ~~order~~ decision on reconsideration under
30.15 subdivision 2 allows unemployment benefits to an applicant under section 268.095
30.16 because of a quit or discharge and the unemployment law judge's decision is reversed
30.17 by the Minnesota Court of Appeals or the Supreme Court of Minnesota, the applicant
30.18 cannot be held ineligible for any of the unemployment benefits paid the applicant and it is
30.19 ~~not considered an overpayment of those unemployment benefits under section 268.18,~~
30.20 ~~subdivision 1~~ before the date of the court's reversal. The effect of the court's reversal is:

30.21 (1) that the applicant may only be held ineligible for future unemployment benefits;
30.22 and

30.23 (2) the application of section 268.047, subdivision 3, in computing the future tax
30.24 rate of the a taxpaying employer.

30.25 (d) If an unemployment law judge, on reconsideration under subdivision 2,
30.26 orders the taking of additional evidence, the ~~unemployment law~~ judge's prior decision
30.27 must continue to be enforced until new findings of fact and decision are made by the
30.28 ~~unemployment law~~ judge.

30.29 Sec. 18. Minnesota Statutes 2012, section 268.105, subdivision 5, is amended to read:

30.30 Subd. 5. **Use of evidence; data privacy.** (a) All testimony at any evidentiary
30.31 hearing ~~conducted under subdivision 1~~ must be recorded. A copy of any recorded
30.32 testimony and exhibits offered or received into evidence at the hearing must, upon request,
30.33 be furnished to a party at no cost:

30.34 (1) during the time period for filing a request for reconsideration or;

30.35 (2) while a request for reconsideration is pending;

31.1 (3) during the time for filing a petition under subdivision 7; or

31.2 (4) while a petition is pending.

31.3 ~~(b) Regardless of any provision of law to the contrary, if recorded testimony and~~
 31.4 ~~exhibits received into evidence at the evidentiary hearing are not requested during the~~
 31.5 ~~time period for filing a request for reconsideration, while a request for reconsideration is~~
 31.6 ~~pending, during the time for filing any appeal under subdivision 7, or during the pendency~~
 31.7 ~~thereof, that testimony and other evidence may later be made available only under a~~
 31.8 ~~district court order. A subpoena is not considered a district court order.~~

31.9 ~~(e) (b)~~ Testimony obtained ~~under subdivision 1~~ at a hearing, may not be used
 31.10 or considered for any purpose, including impeachment, in any civil, administrative, or
 31.11 contractual proceeding, except by a local, state, or federal human rights agency with
 31.12 enforcement powers, unless the proceeding is initiated by the department. This paragraph
 31.13 does not apply to criminal proceedings.

31.14 Sec. 19. Minnesota Statutes 2012, section 268.105, subdivision 6, is amended to read:

31.15 Subd. 6. **Representation; fees.** (a) In any proceeding under subdivision 1 or 2, an
 31.16 applicant or ~~involved~~ employer may be represented by any ~~agent~~ authorized representative.

31.17 ~~(b)~~ Except for services provided by an attorney-at-law, no person may charge an
 31.18 applicant a fee of any kind for advising, assisting, or representing an applicant in a hearing
 31.19 or on reconsideration.

31.20 (b) An applicant may not be charged fees, costs, or disbursements of any kind in
 31.21 a proceeding before an unemployment law judge, the Minnesota Court of Appeals, or
 31.22 the Supreme Court of Minnesota.

31.23 (c) No attorney fees may be awarded against the department as a result of any
 31.24 proceedings under this section.

31.25 Sec. 20. Minnesota Statutes 2012, section 268.184, subdivision 1, is amended to read:

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

31.31 (b) The commissioner must penalize an employer if that employer or any employee,
 31.32 officer, or agent of that employer: (1) made a false statement or representation knowing
 31.33 it to be false; (2) made a false statement or representation without a good faith belief
 31.34 as to correctness of the statement or representation; (3) knowingly failed to disclose a

32.1 material fact; or (4) made an offer of employment to an applicant when, in fact, the
32.2 employer had no employment available.

32.3 The penalty is the greater of \$500 or 50 percent of the following resulting from the
32.4 employer's action:

32.5 (i) the amount of any overpaid unemployment benefits to an applicant;

32.6 (ii) the amount of unemployment benefits not paid to an applicant that would
32.7 otherwise have been paid; or

32.8 (iii) the amount of any payment required from the employer under this chapter or
32.9 section 116L.20 that was not paid.

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

32.13 (d) Penalties under this subdivision and under section 268.047, subdivision 4,
32.14 paragraph (b), are in addition to any other penalties and subject to the same collection
32.15 procedures that apply to past due taxes. Penalties must be paid within 30 calendar days of
32.16 issuance of the determination of penalty and credited to the trust fund.

32.17 (e) The determination of penalty is final unless the employer files an appeal within
32.18 20 calendar days after the sending of the determination of penalty to the employer by
32.19 mail or electronic transmission. Proceedings on the appeal are conducted in accordance
32.20 with section 268.105.

32.21 Sec. 21. Minnesota Statutes 2012, section 268.184, subdivision 1a, is amended to read:

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

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

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

(d) Penalties under this subdivision are in addition to any other penalties and subject to the same collection procedures that apply to past due amounts from an employer. Penalties must be paid within 30 calendar days after sending of the determination of penalty and credited to the trust fund.

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

Sec. 22. Minnesota Statutes 2012, section 268.196, subdivision 1, is amended to read:

Subdivision 1. **Administration account.** (a) There is created in the state treasury a special account to be known as the administration account. All money ~~that is~~ deposited into this account is continuously available to the commissioner for ~~expenditure to administer~~ administering the Minnesota unemployment insurance program, and does not lapse at any time. The administration account consists of all money:

(1) ~~all money~~ received from the federal government to:

(i) ~~administer~~ the Minnesota unemployment insurance program;

(ii) ~~administer~~ any federal unemployment insurance program, ~~or assistance provided to;~~ and

(iii) ~~assist~~ any other state ~~to administer~~ in administering that state's unemployment insurance program;

(2) ~~five percent of any money recovered on overpaid unemployment benefits as provided for in section 268.194, subdivision 1, clause (7), which must be used for deterring, detecting, and collecting overpaid unemployment benefits;~~

(3) ~~any money~~ (2) received as ~~compensation~~ for services or facilities supplied to the federal government or any other state;

(4) ~~any money~~ (3) credited to this account under this chapter;

(5) ~~any amounts~~ (4) received for losses sustained by this account or by reason of damage to equipment or supplies; and

(6) ~~any proceeds~~ (5) received from the sale ~~or disposition~~ of any equipment or supplies that ~~may~~ are no longer be necessary for the ~~proper~~ administration of ~~those sections~~ the Minnesota unemployment insurance program.

(b) All money in this account must be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as are provided by law for the other special accounts in the state treasury. The commissioner of management and budget, as treasurer and custodian of this account, is liable for the faithful performance of duties in connection with this account.

(c) All money in this account ~~must~~ may only be spent for the ~~purposes and in the~~
~~amounts found necessary by the United States Secretary of Labor for the proper and~~
~~efficient~~ administration of the Minnesota unemployment insurance program.

Sec. 23. Minnesota Statutes 2012, section 268.215, is amended to read:

268.215 DAY OF THE WEEK AND DATE REQUIREMENT.

(a) Every determination issued under this chapter ~~that is subject to an appeal to an~~
~~unemployment law judge~~ must indicate the day of the week and the date, for example,
 Tuesday, August 1, 2006, that the determination is final and no longer subject to an appeal.

(b) Every decision issued by an unemployment law judge under section 268.105,
 subdivision ~~1~~a, must indicate the day of the week and the date, for example, Tuesday,
 August 1, 2006, that the decision is final and no longer subject to reconsideration.

Sec. 24. **REVISOR'S INSTRUCTION.**

(a) The revisor of statutes shall make the following terminology changes in
Minnesota Statutes and Minnesota Rules:

(1) "evidentiary hearing" to "hearing" in Minnesota Statutes, section 268.105;

(2) "involved employer" to "employer" in Minnesota Statutes, section 268.105;

(3) "involved applicant" to "applicant" in Minnesota Statutes, section 268.105;

(4) "involved party" to "party" in Minnesota Statutes, section 268.105;

(5) "order under subdivision 2" to "decision on reconsideration under subdivision 2"
in Minnesota Statutes, section 268.105;

(6) "review the unemployment law judge's decision" to "review the unemployment
law judge's decision on reconsideration" in Minnesota Statutes, section 268.105;

(7) "If the applicant has earnings, with respect to any week" to "If the applicant has
earnings, including holiday pay, with respect to any week" in Minnesota Statutes, section
268.085;

(8) "retroactive payment of money" to "payment" in Minnesota Statutes, section
268.035;

(9) "an alternate base period" to "a base period" in Minnesota Statutes, chapter 268;

(10) "section 645.151" to "sections 645.15 and 645.151" in Minnesota Statutes,
section 268.033;

(11) "appeal decision or order" to "unemployment law judge's decision" in
Minnesota Statutes, section 268.18;

(12) "personal identification number," "personal identification number (PIN)," or
"PIN" to "password" in Minnesota Statutes, section 268.084; and

(13) "for a period of not less than eight years after the calendar year" to "for a period of not less than four years in addition to the current calendar year" in Minnesota Rules, part 3315.1010.

(b) The revisor of statutes shall renumber Minnesota Statutes, section 268.105, subdivision 1, paragraphs (d) to (g), as Minnesota Statutes, section 268.105, subdivision 1a, paragraphs (a) to (d); and Minnesota Statutes, section 268.105, subdivision 1, paragraphs (h) to (j), as Minnesota Statutes, section 268.105, subdivision 1b, paragraphs (a) to (c).

(c) The revisor of statutes shall reletter Minnesota Statutes, section 268.035, subdivision 4, as follows: paragraph (c) is relettered paragraph (e); paragraph (e) is relettered paragraph (f); and paragraph (f) is relettered paragraph (c). The revisor shall make any cross-reference changes necessary from this relettering.

Sec. 25. **REPEALER.**

(a) Minnesota Statutes 2012, section 268.105, subdivision 4, is repealed.

(b) Laws 2005, chapter 112, article 1, section 15, is repealed.

(c) Laws 2008, chapter 363, article 10, section 30, is repealed.

(d) Minnesota Rules, parts 3315.0200, subpart 1; 3315.0203; 3315.0211; 3315.0212; 3315.0213; 3315.0801; 3315.0805; 3315.0810; 3315.0815; 3315.0820; 3315.0825; 3315.0830; 3315.0835; 3315.0840; 3315.0845; 3315.0901; and 3315.0905, are repealed.

Sec. 26. **EFFECTIVE DATE.**

Unless otherwise specified, this article is effective the fourth Sunday following final enactment, and applies to all matters and issues pending determination or decision.

APPENDIX
Article locations in 14-3498

ARTICLE 1	UNEMPLOYMENT INSURANCE ADVISORY COUNCIL POLICY	Page.Ln 1.17
ARTICLE 2	UNEMPLOYMENT INSURANCE ADVISORY COUNCIL HOUSEKEEPING	Page.Ln 10.18

APPENDIX
Repealed Minnesota Statutes: 14-3498

268.105 APPEALS.

Subd. 4. **Oaths; subpoenas.** An unemployment law judge has authority to administer oaths and affirmations, take depositions, and issue subpoenas to compel the attendance of witnesses and the production of documents and other personal property considered necessary as evidence in connection with the subject matter of an evidentiary hearing.

The unemployment law judge must give full consideration to a request for a subpoena and must not unreasonably deny a request for a subpoena. If a subpoena request is initially denied, the unemployment law judge must, on the unemployment law judge's own motion, reconsider that request during the evidentiary hearing and rule on whether the request was properly denied. If the request was not properly denied, the evidentiary hearing must be continued for issuance of the subpoena. The subpoenas are enforceable through the district court in Ramsey County. Witnesses subpoenaed, other than an involved applicant or involved employer or officers and employees of an involved employer, must be paid by the department the same witness fees as in a civil action in district court.

APPENDIX
Repealed Minnesota Session Laws: 14-3498

Laws 2005, chapter 112, article 1, section 15

Sec. 15. RELATION TO FEDERAL LAW.

This article is enacted to meet the requirements of the Federal SUTA Dumping Prevention Act of 2004, Public Law 108-295, amending United States Code, title 42, section 503, and shall be construed, interpreted, and applied consistent with the requirements of that federal law, including its definitions.

Laws 2008, chapter 363, article 10, section 30

Sec. 30. HARDSHIP PAYMENTS.

Subdivision 1. **Payments; availability.** Hardship payments are available to an applicant if the applicant suffered economic hardship due to delays in receiving unemployment benefits resulting from the new unemployment insurance application and filing system implemented by the Department of Employment and Economic Development on October 15, 2007.

Subd. 2. **Economic hardship.** "Economic hardship" means financial losses to an applicant resulting from: checks returned for insufficient funds; account overdraft charges; installment credit penalties, interest, and other fees resulting from missed or late payments; mortgage loan late fees, interest charges, or other penalties; charges for force-placed automobile or homeowner's insurance; penalties for late payment of income or property taxes; and any penalties or adverse consequences, including the suspension of an applicant's driver's license due to nonpayment of child support.

Subd. 3. **Payment from administration account.** Hardship payments are payable from the unemployment insurance administration account under Minnesota Statutes, section 268.196.

Subd. 4. **Eligibility conditions.** An applicant is eligible to receive hardship payments under this section if the applicant's unemployment benefit payments due and payable after October 15, 2007, were delayed at least four weeks.

Subd. 5. **Amount of hardship payments.** The amount of hardship payments available to an applicant is equal to the amount of economic hardship experienced by an applicant due to the delay in receiving unemployment benefits. An applicant must provide documentation of the amount of financial hardship claimed using financial institution records, consumer or business credit records, child support records, or other commonly recognized methods of documenting financial transactions.

Subd. 6. **Notice.** The commissioner must notify applicants of the availability of hardship payments by posting a notice on the department's official Web site, by notifying applicants by individual mailing where department records show the applicant may be eligible under subdivision 4, and by any other appropriate announcement.

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

3315.0200 PURPOSE.

Subpart 1. **Scope.** Parts 3315.0200 to 3315.0213 further define "wages" as defined in Minnesota Statutes, section 268.035, subdivision 29, and used in Minnesota Statutes, sections 268.03 to 268.23; this chapter; interpretations; forms; and other official pronouncements issued by the department.

3315.0203 WAGES PAYABLE, CORPORATE OFFICERS.

If a corporation does not have a regularly scheduled pay date for its officers or have reference to one in the corporate minutes, the wages of its corporate officers are considered due when paid. If the corporate minutes specify an amount to be paid each period, such as a week, month, or year, without specifying an exact pay date, the wages for a period are considered due no later than the end of the period.

3315.0211 TIPS AND GRATUITIES AS WAGES.

Subpart 1. **Accounted for to the employer.** Tips and gratuities are accounted for to the employer in various manners or forms including when they are:

- A. added to the customer's bill by the employer;
- B. added to the bill by a customer using credit for the purchase;
- C. disbursed by the employer from a tip pool; or
- D. reported to the employer in compliance with the Internal Revenue Code of 1986.

Subp. 2. **Paid to an employee by a customer.** Tips and gratuities are considered paid to an employee by a customer if they are:

- A. received directly from the customer;
- B. distributed from a tip pool, whether controlled by the employer or employees; or
- C. received as part of a plan or system under which the person initially receiving them, whether directly from the customer or from a tip pool, distributes a portion of the tips to other employees.

Under items A to C the tips are considered as being paid by the customer to the person ultimately receiving them.

3315.0212 EMPLOYEE EQUIPMENT AND VEHICLES.

Subpart 1. **Trucks, bulldozers, tractors.** The compensation of the operator and supplier of a bulldozer, tractor, or similar equipment, and trucks other than truck owner-operators excluded under Minnesota Statutes, section 268.035, subdivision 25b, whose compensation includes wages for personal services as well as the cost of operating and hiring the equipment are wages unless the amount attributable to wages is separately identified either by making separate payments; or, if both wages and equipment hire are combined in a single payment, by a prearranged written agreement or by specifically indicating the separate amounts at the time of each payment.

Subp. 2. **Advances or reimbursements as wages.** Payments to an employee that include advances or reimbursements for use of a personal vehicle of up to 9,000 pounds gross vehicle weight in the employer's business are wages unless the amount attributable to the use of the vehicle is separately paid or stated as prescribed in Minnesota Statutes, section 268.035, subdivision 29, paragraph (a), clause (10), and the advance or reimbursement is not unreasonable or arbitrary in which case only the amount attributable to services performed is wages.

Subp. 3. **Commissioner determination of wages.** If the commissioner finds that the wage determination of the equipment operators or employees who use their personal vehicles in the employer's business prescribed by subparts 1 and 2 would be unreasonable or arbitrary in a particular case, then the commissioner must determine the amount of the wages of the employee involved.

3315.0213 NONCASH WAGES.

Except as may otherwise be provided in this chapter, the cash value of wages payable in any medium other than cash is:

- A. the fair market value of meals or any value agreed upon between the employer and employee if it is not less than the allowance as provided in Minnesota Statutes, sections 177.21 to 177.35, the Minnesota Fair Labor Standards Act, and rules promulgated thereunder;

APPENDIX
Repealed Minnesota Rule: 14-3498

B. the value of rent of a house, apartment, or other lodging, furnished to an employee that would be paid by an employee for similar or equivalent accommodations, but in no event less than the allowance provided in Minnesota Statutes, sections 177.21 to 177.35 and rules promulgated thereunder; or

C. the fair market value, determined when received, of any other payment for services unless a higher value is agreed upon between the employer and the employee.

If the commissioner determines that the reasonable fair market value is other than as determined by the employer the commissioner must, after affording the employer reasonable opportunity for the submission of relevant information, determine the reasonable cash value of board, rent, housing, meals, or similar advantage.

3315.0801 PURPOSE.

Parts 3315.0801 to 3315.0845 further define and clarify terms used in Minnesota Statutes, section 268.035, subdivisions 2, 11, and 20, clause (34), and in parts 3315.0801 to 3315.0845.

3315.0805 DEFINITIONS.

Subpart 1. **Agricultural and horticultural commodity.** "Agricultural or horticultural commodity" includes nuts, fruits, mushrooms, vegetables, honey, milk, eggs and grain, flowers, cut flowers, trees, sod and shrubbery, animal feed or bedding, grass seed, vegetable and cereal seed, flax, soy beans, sunflower seeds, corn, medicinal herbs, and other crops.

Subp. 2. **Commodity.** "Commodity" refers to a single product. For example, all apples are one commodity. Apples and peaches are two separate commodities.

Subp. 3. **Crop purchase agreement.** "Crop purchase agreement" means an agreement whereby a crop is raised under contract with a buyer.

Subp. 4. **Cultivating.** "Cultivating" means cultivating of the soil, irrigating crops, spraying, dusting, and other related operations.

Subp. 5. **Farm.** "Farm," unless otherwise excluded in part 3315.0820, means land or buildings if their primary use is for raising agricultural or horticultural commodities or for activities generally associated with the operation of a ranch, range, livestock, or dairy operation. A farm need not be a specific size and it need not be composed of contiguous plots. The performance of agricultural services does not by itself render the place where they are performed a farm.

Subp. 6. **Fur-bearing animals.** "Fur-bearing animals" are animals raised for the eventual use of their fur in the manufacture of clothing or other products.

Subp. 7. **Harvesting.** "Harvesting" includes baling hay and straw, shredding fodder, combining small grains, hulling nuts, and course grinding of alfalfa. Horticultural commodities including flowers, trees, shrubbery, and plants are harvested when they are taken up for sale or storage.

Subp. 8. **Livestock.** "Livestock" is any useful domestic animal kept for use on a farm or raised for sale and profit or for eventual consumption.

Subp. 9. **Poultry.** "Poultry" is any domestic fowl raised for meat or eggs and includes chickens, turkeys, ducks, and geese.

Subp. 10. **Primary.** "Primary" means 70 percent or more.

Subp. 11. **Raising.** "Raising" as it pertains to livestock, bees, poultry, fur-bearing animals, and wildlife means any or all stages of development, including breeding, which are necessary in their maturing for use on the farm or for sale. Raising does not include services in potting, watering, heeling, or otherwise caring for trees, shrubbery, plants, flowers, or similar items that are purchased in salable condition for the purpose of resale.

Subp. 12. **Terminal market.** A "terminal market" includes a packing or processing plant or any place where a farmer-producer customarily relinquishes economic interest in the commodity, its future form, or its destiny.

Subp. 13. **Wildlife.** "Wildlife" refers to frogs, birds, fish, and all animals belonging to a species or class generally considered wild regardless of the element which they inhabit.

3315.0810 UNMANUFACTURED STATE.

Minnesota Statutes, section 268.035, subdivision 2, requires that the services described in that subdivision be in connection with commodities that are in their unmanufactured state. A commodity that loses its original identity is considered in a manufactured state and services relating to the manufactured product are not agricultural. The following products are considered

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as being in a manufactured state: cheese; butter; yogurt; ice cream; dried or powdered milk; dried fruits or vegetables; juices, oils, and syrups derived from fruits and vegetables; and dried or powdered eggs.

3315.0815 FARMS, INCLUSIONS.

Subpart 1. **Wild rice.** Land developed for seeding, cultivating, and raising wild rice is a farm.

Subp. 2. **Christmas trees.** A plot of land used primarily for raising Christmas trees is a farm.

Subp. 3. **Mushrooms.** Land and structures used primarily for raising mushrooms is a farm.

Subp. 4. **Wildlife.** A parcel of real property used for raising any form of wildlife is a farm.

Subp. 5. **Ranges.** Land used primarily for grazing is a farm.

3315.0820 FARMS, EXCLUSIONS.

Subpart 1. **Feedlots, hatcheries, and horse training and breeding.** Feedlots, hatcheries, and horse training and breeding enterprises are not in themselves farms although they require services generally considered to be agricultural labor.

Subp. 2. **Wildland.** Property left in its wild state with no effort expended to perform common farming operations is not a farm.

3315.0825 AGRICULTURAL LABOR ON FARMS.

Services connected with the following activities must be performed on a farm as defined in Minnesota Statutes, section 268.035, subdivision 2, and in parts 3315.0801 to 3315.0845, to be agricultural labor:

A. breeding and training horses;

B. hatching poultry;

C. aerial seeding, fertilizing, spraying, and dusting including services related to the mixing of the spray or dust material or the loading of the material into the airplane, as well as services related to the measuring of the swaths and the marking and flagging of fields to be dusted or sprayed;

D. clerical, bookkeeping, and other office work in conjunction with the services referred to in Minnesota Statutes, section 268.035, subdivisions 2 and 11; or

E. holding, feeding, and fattening livestock in feed lots.

3315.0830 AGRICULTURAL LABOR, CONDITIONAL SITUATIONS.

Subpart 1. **Generally.** The services described in subparts 2 to 5 are not agricultural labor unless they meet the specific requirements set forth in subparts 2 to 5 with regard to where and for whom they are performed. When reference is made to "incidental to ordinary farming operations," that means services of the character ordinarily performed by employees of a farmer or of a farmer's cooperative organization or group as a prerequisite to marketing in its unmanufactured state any agricultural or horticultural commodity produced by the farmer, organization, or group.

Subp. 2. **Clerical work.** Record keeping and other clerical or office work performed in connection with the functions described in Minnesota Statutes, section 268.035, subdivisions 2 and 11, unless they are:

A. performed in the employ of the owner or tenant or other operator of a farm;

B. rendered in major part on a farm; and

C. performed incidentally to ordinary farming operations.

Subp. 3. **Commodity retailing.** Retailing agricultural or horticultural commodities, on or off the farm, unless:

A. the services are performed for, and the commodities are produced by the operator of the farm; and

B. less than 50 percent of the employee's time is devoted to the services. The 50 percent test is to be applied to each employee with respect to either a pay period or 31 days, whichever is less.

Subp. 4. **Waterways work.** Services in the construction of canals, reservoirs, waterways, or drainage ditches, unless in the employ of the owner or tenant or other operator of a farm.

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Subp. 5. **Land clearance.** Services in the clearing of stumps, brush, and debris from land in preparation for its use as a farm, unless done in the employ of the owner tenant or other operator of the farm.

3315.0835 AGRICULTURAL LABOR EXCLUSIONS.

Subpart 1. **Generally.** Services connected with the following activities do not constitute agricultural labor:

- A. breeding, raising, and caring for mice, rats, and other rodents and creatures commonly held for sale in pet shops or raised for research and experimental purposes;
 - B. breeding, raising, caring for, exhibiting, and boarding dogs and cats;
 - C. racing, exhibiting, and boarding horses, including services connected with a riding stable or academy;
 - D. lumbering or landscaping;
 - E. collecting and processing maple sap into maple syrup or sugar;
 - F. trapping animals;
 - G. harvesting native wild rice not grown on land developed specifically for that purpose;
- or
- H. raising and harvesting worms.

Subp. 2. **Packing plants.** Services performed in the employ of any person other than the operator of a farm in hauling crops to a packing plant and services within the plant do not constitute agricultural labor.

3315.0840 AGRICULTURAL LABOR, SEPARATE COMMODITIES.

The services with respect to each commodity are to be considered separately in determining whether the conditions set forth in Minnesota Statutes, section 268.035, subdivisions 2 and 11, have been satisfied.

3315.0845 CROP PURCHASE AGREEMENTS.

Subpart 1. **Farm operator.** A person agreeing to purchase a commodity grown under a crop purchase agreement does not by that reason qualify as an operator of a farm even though the person conducts some or all of the operations necessary for the production and harvesting of the crops purchased.

Subp. 2. **Agricultural labor.** Services performed on a farm in the employ of either party to a crop purchase agreement in connection with the raising and harvesting of crops is agricultural labor.

3315.0901 PURPOSE.

Parts 3315.0901 and 3315.0905 further define and clarify terms used in Minnesota Statutes, section 268.035, subdivision 20, clause (18), and in parts 3315.0901 and 3315.0905.

3315.0905 DEFINITIONS.

Subpart 1. **Domestic service.** "Domestic service" means work ordinarily performed as an integral part of household duties that contribute to the maintenance of the employer's private home or administers to the personal wants and comforts of the employer and other members of the employer's household. In general "domestic service" includes work performed by cooks, table servers, butlers, housekeepers, house servants, security guards, cleaners, companions, child care providers and teachers employed in the household, valets, babysitters, launderers, furnace workers, caretakers, gardeners, grooms, sewing workers, odd-job workers, and chauffeurs of family automobiles. Domestic service performed for fraternities and sororities also includes services performed by houseparents.

Subp. 2. **Local college club.** "Local college club" means a club operated and controlled by and for the benefit of students enrolled at a university or college.

Subp. 3. **Private home.** "Private home" means the fixed abode of one or more persons. Any shelter used as a dwelling may be considered as a private home including a tent, boat, trailer, or a room or suite in a hospital, hotel, sanatorium, or nursing home. A cooperative boarding and lodging facility may also be a private home. In an apartment house, each apartment, together with its stairways, halls, and porches is a private home. Parts of the premises devoted to common use, such as an office, furnace room, lawns, public stairways, halls, and porches, are not a part of the

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private home. If a facility is used mainly as a commercial rooming or boarding house only that part of the house which is used as the operator's living quarters is considered to be a private home.