

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. **374**

01/24/2019 Authored by Xiong, J.; Albright; Nelson and Sundin
The bill was read for the first time and referred to the Committee on Ways and Means
02/27/2019 Adoption of Report: Placed on the General Register as Amended
Read for the Second Time
03/28/2019 Referred to the Chief Clerk for Comparison with S. F. No. 1547
04/01/2019 Postponed Indefinitely

1.1 A bill for an act
1.2 relating to unemployment insurance; adopting changes recommended by the
1.3 Unemployment Insurance Advisory committee in the 2018 legislative session;
1.4 amending Minnesota Statutes 2018, sections 268.035, subdivisions 4, 12, 15, 20;
1.5 268.044, subdivisions 2, 3; 268.046, subdivision 1; 268.047, subdivision 3; 268.051,
1.6 subdivision 2a; 268.057, subdivision 5; 268.069, subdivision 1; 268.07, subdivision
1.7 1; 268.085, subdivisions 3, 3a, 13a, by adding subdivisions; 268.095, subdivisions
1.8 6, 6a; 268.105, subdivision 6; 268.145, subdivision 1; 268.18, subdivisions 2b, 5.

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

1.10 **ARTICLE 1**

1.11 **UNEMPLOYMENT INSURANCE ADVISORY COUNCIL; POLICY**

1.12 Section 1. Minnesota Statutes 2018, section 268.035, subdivision 12, is amended to read:

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

1.15 ~~(i)~~ an employee's entire employment during the calendar quarter if:

1.16 ~~(i)~~ (1) 50 percent or more of the employment during the quarter is performed primarily
1.17 in Minnesota;

1.18 ~~(ii)~~ (2) 50 percent or more of the employment during the quarter is not performed
1.19 primarily in Minnesota or any other state, or Canada, but some of the employment is
1.20 performed in Minnesota and the ~~base of operations or the place from which the employment~~
1.21 ~~is directed or controlled is in Minnesota; or~~

1.22 ~~(iii) the employment during the quarter is not performed primarily in Minnesota or any~~
1.23 ~~other state and the base of operations or place from which the employment is directed or~~

controlled is not in any state where part of the employment is performed, but the employee's residence is in Minnesota during 50 percent or more of the calendar quarter;

~~(2) an employee's entire employment during the calendar quarter performed within the United States or Canada, if:~~

~~(i) the employment is not covered employment under the unemployment insurance program of any other state, federal law, or the law of Canada; and~~

~~(ii) the place from which the employment is directed or controlled is in Minnesota;~~

(3) the employment during the ~~calendar~~ quarter, is performed entirely outside the United States and Canada, by an employee who is a United States citizen in the employ of an American employer, if the employer's principal place of business in the United States is located in Minnesota. For the purposes of this clause, an "American employer," for the purposes of this clause, means a corporation organized under the laws of any state, an individual who is a resident of 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 is defined under the Federal Unemployment Tax Act, United States Code title 26, chapter 23, section 3306, subsection (j)(3); and or

(4) ~~all the~~ employment during the ~~calendar~~ quarter is performed by an officer or member of the crew of an American vessel ~~on or in connection with the vessel, if the operating on navigable waters within, or within and without, the United States, and the 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.

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

(c) For the purposes of section 268.095, "covered employment" includes employment covered under an unemployment insurance program:

(1) of any other state; ~~or~~

(2) established by an act of Congress; or

(3) the law of Canada.

(d) The percentage of employment performed under paragraph (a) is determined by the amount of hours worked.

3.1 (e) Covered employment does not include any employment defined as "noncovered
3.2 employment" under subdivision 20.

3.3 Sec. 2. Minnesota Statutes 2018, section 268.035, subdivision 20, is amended to read:

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

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

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

3.9 (3) employment for a foreign government;

3.10 (4) employment covered under the federal Railroad Unemployment Insurance Act;

3.11 (5) employment for a church or convention or association of churches, or a nonprofit
3.12 organization operated primarily for religious purposes that is operated, supervised, controlled,
3.13 or principally supported by a church or convention or association of churches;

3.14 (6) employment for an elementary or secondary school with a curriculum that includes
3.15 religious education that is operated by a church, a convention or association of churches,
3.16 or a nonprofit organization that is operated, supervised, controlled, or principally supported
3.17 by a church or convention or association of churches;

3.18 (7) employment for Minnesota or a political subdivision, or a nonprofit organization, of
3.19 a duly ordained or licensed minister of a church in the exercise of a ministry or by a member
3.20 of a religious order in the exercise of duties required by the order;

3.21 (8) employment for Minnesota or a political subdivision, or a nonprofit organization, of
3.22 an individual receiving rehabilitation of "sheltered" work in a facility conducted for the
3.23 purpose of carrying out a program of rehabilitation for individuals whose earning capacity
3.24 is impaired by age or physical or mental deficiency or injury or a program providing
3.25 "sheltered" work for individuals who because of an impaired physical or mental capacity
3.26 cannot be readily absorbed in the competitive labor market. This clause applies only to
3.27 services performed in a facility certified by the Rehabilitation Services Branch of the
3.28 department or in a day training or habilitation program licensed by the Department of Human
3.29 Services;

3.30 (9) employment for Minnesota or a political subdivision, or a nonprofit organization, of
3.31 an individual receiving work relief or work training as part of an unemployment work relief
3.32 or work training program financed in whole or in part by any federal agency or an agency

of a state or political subdivision thereof. This clause does not apply to programs that require unemployment benefit coverage for the participants;

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

(11) employment as a member of the Minnesota National Guard or Air National Guard;

(12) employment for Minnesota or a political subdivision, or instrumentality thereof, of an individual serving on a temporary basis in case of fire, flood, tornado, or similar emergency;

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

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

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

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

(17) domestic employment in a private household, local college club, or local chapter of a college fraternity or sorority, if the wages paid in any calendar quarter in either the current or prior calendar year to all individuals in domestic employment totaled less than \$1,000.

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

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

(19) employment of an inmate of a custodial or penal institution;

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

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

(22) employment of a foreign college or university student who works on a seasonal or temporary basis under the J-1 visa summer work travel program described in Code of Federal Regulations, title 22, section 62.32;

~~(22)~~ (23) employment of university, college, or professional school students in an internship or other training program with the city of St. Paul or the city of Minneapolis under Laws 1990, chapter 570, article 6, section 3;

~~(23)~~ (24) employment for a hospital by a patient of the hospital. "Hospital" means an institution that has been licensed by the Department of Health as a hospital;

~~(24)~~ (25) employment as a student nurse for a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in an accredited nurses' training school;

~~(25)~~ (26) employment as an intern for a hospital by an individual who has completed a four-year course in an accredited medical school;

~~(26)~~ (27) employment as an insurance salesperson, by other than a corporate officer, if all the wages from the employment is solely by way of commission. The word "insurance" includes an annuity and an optional annuity;

~~(27)~~ (28) employment as an officer of a township mutual insurance company or farmer's mutual insurance company under chapter 67A;

~~(28)~~ (29) employment of a corporate officer, if the officer directly or indirectly, including through a subsidiary or holding company, owns 25 percent or more of the employer corporation, and employment of a member of a limited liability company, if the member directly or indirectly, including through a subsidiary or holding company, owns 25 percent or more of the employer limited liability company;

~~(29)~~ (30) employment as a real estate salesperson, other than a corporate officer, if all the wages from the employment is solely by way of commission;

6.1 ~~(30)~~ (31) employment as a direct seller as defined in United States Code, title 26, section
6.2 3508;

6.3 ~~(31)~~ (32) employment of an individual under the age of 18 in the delivery or distribution
6.4 of newspapers or shopping news, not including delivery or distribution to any point for
6.5 subsequent delivery or distribution;

6.6 ~~(32)~~ (33) casual employment performed for an individual, other than domestic
6.7 employment under clause (17), that does not promote or advance that employer's trade or
6.8 business;

6.9 ~~(33)~~ (34) employment in "agricultural employment" unless it is "covered agricultural
6.10 employment" under subdivision 11; or

6.11 ~~(34)~~ (35) if employment during one-half or more of any pay period was covered
6.12 employment, all the employment for the pay period is covered employment; but if during
6.13 more than one-half of any pay period the employment was noncovered employment, then
6.14 all of the employment for the pay period is noncovered employment. "Pay period" means
6.15 a period of not more than a calendar month for which a payment or compensation is ordinarily
6.16 made to the employee by the employer.

6.17 Sec. 3. Minnesota Statutes 2018, section 268.051, subdivision 2a, is amended to read:

6.18 Subd. 2a. **Unemployment insurance tax ~~limits~~ reduction.** (a) If the balance in the trust
6.19 fund on December 31 of any calendar year is four percent or more above the amount equal
6.20 to an average high cost multiple of 1.0, future unemployment taxes payable must be reduced
6.21 by all amounts above 1.0. The amount of tax reduction for any taxpaying employer is the
6.22 same percentage of the total amount above 1.0 as the percentage of taxes paid by the
6.23 employer during the calendar year is of the total amount of taxes that were paid by all
6.24 ~~nonmaximum experience-rated~~ employers during the year except taxes paid by employers
6.25 assigned a tax rate equal to the maximum experience rating plus the applicable base tax
6.26 rate.

6.27 (b) For purposes of this subdivision, "average high cost multiple" has the meaning given
6.28 in Code of Federal Regulations, title 20, section 606.3, as amended through December 31,
6.29 2015. An amount equal to an average high cost multiple of 1.0 is a federal measure of
6.30 adequate reserves in relation to the state's current economy. The commissioner must calculate
6.31 and publish, as soon as possible following December 31 of any calendar year, the trust fund
6.32 balance on December 31 along with the amount an average high cost multiple of 1.0 equals.
6.33 Actual wages paid must be used in the calculation and estimates may not be used.

(c) The unemployment tax reduction under this subdivision does not apply to employers that were at assigned a tax rate equal to the maximum experience rating plus the applicable base tax rate for the year, nor to high experience rating industry employers under subdivision 5, paragraph (b). Computations under paragraph (a) are not subject to the rounding requirement of section 268.034. The refund provisions of section 268.057, subdivision 7, do not apply.

(d) The unemployment tax reduction under this subdivision applies to taxes paid between March 1 and December 15 of the year following the December 31 computation under paragraph (a).

~~(e) The amount equal to the average high cost multiple of 1.0 on December 31, 2012, must be used for the calculation under paragraph (a) but only for the calculation made on December 31, 2015. Notwithstanding paragraph (d), the tax reduction resulting from the application of this paragraph applies to unemployment taxes paid between July 1, 2016, and June 30, 2017. If there was an experience rating history transfer under subdivision 4, the successor employer must receive that portion of the predecessor employer's tax reduction equal to that portion of the experience rating history transferred. The predecessor employer retains that portion of tax reduction not transferred to the successor. This paragraph applies to that portion of the tax reduction that remains unused at the time of notice of acquisition is provided under subdivision 4, paragraph (e).~~

Sec. 4. EFFECTIVE DATE.

Unless otherwise specified, this article is effective October 1, 2020.

ARTICLE 2

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL; INTEREST

Section 1. Minnesota Statutes 2018, 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~~ the commissioner must assess interest on any amount that remains unpaid. Interest is assessed at the rate of one percent per month or any part of a month. Interest is not assessed on unpaid interest. Interest collected under this subdivision is credited to the contingent account.

EFFECTIVE DATE. This section is effective October 1, 2020.

Sec. 2. Minnesota Statutes 2018, section 268.18, subdivision 2b, is amended to read:

Subd. 2b. **Interest.** On any unemployment benefits obtained by misrepresentation, and any penalty amounts assessed under subdivision 2, the commissioner must assess interest ~~at the rate of one percent per month~~ on any amount that remains unpaid beginning 30 calendar days after the date of a determination of overpayment penalty. Interest is assessed at the rate of one percent per month or any part of a month. A determination of overpayment penalty must state that interest will be assessed. Interest is not assessed ~~in the same manner as on employer debt under section 268.057, subdivision 5~~ on unpaid interest. Interest payments collected under this subdivision ~~are~~ is credited to the trust fund.

EFFECTIVE DATE. This section is effective October 1, 2020.

ARTICLE 3

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL; BASE PERIODS

Section 1. Minnesota Statutes 2018, section 268.035, subdivision 4, is amended to read:

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

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

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

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

9.1	July 1 - July 31	April 1 - March 31
9.2	October 1 - October 31	July 1 - June 30

9.3 (c) Regardless of paragraph (a), a base period of the first four of the most recent five
9.4 completed calendar quarters must be used if the applicant would have more wage credits
9.5 under that base period than under a base period of the four most recent completed calendar
9.6 quarters.

9.7 ~~(d) If the applicant under paragraph (b) has insufficient wage credits to establish a benefit~~
9.8 ~~account, then a base period of the most recent four completed calendar quarters before the~~
9.9 ~~effective date of the applicant's application for unemployment benefits must be used.~~

9.10 ~~(e)~~ (d) If the applicant has insufficient wage credits to establish a benefit account under
9.11 a base period of the four most recent completed calendar quarters, or a base period of the
9.12 first four of the most recent five completed calendar quarters, but during either base period
9.13 the applicant received workers' compensation for temporary disability under chapter 176
9.14 or a similar federal law or similar law of another state, or if the applicant whose own serious
9.15 illness caused a loss of work for which the applicant received compensation for loss of
9.16 wages from some other source, the applicant may request a base period as follows:

9.17 (1) if an applicant was compensated for a loss of work of seven to 13 weeks; during a
9.18 base period referred to in paragraph (a) or (b), then the base period is the first four of the
9.19 most recent six completed calendar quarters before the effective date of the application for
9.20 unemployment benefits;

9.21 (2) if an applicant was compensated for a loss of work of 14 to 26 weeks; during a base
9.22 period referred to in paragraph (a) or (b), then the base period is the first four of the most
9.23 recent seven completed calendar quarters before the effective date of the application for
9.24 unemployment benefits;

9.25 (3) if an applicant was compensated for a loss of work of 27 to 39 weeks; during a base
9.26 period referred to in paragraph (a) or (b), then the base period is the first four of the most
9.27 recent eight completed calendar quarters before the effective date of the application for
9.28 unemployment benefits; and

9.29 (4) if an applicant was compensated for a loss of work of 40 to 52 weeks; during a base
9.30 period referred to in paragraph (a) or (b), then the base period is the first four of the most
9.31 recent nine completed calendar quarters before the effective date of the application for
9.32 unemployment benefits.

10.1 ~~(f)~~ (e) No base period under this subdivision may include wage credits upon which a
10.2 prior benefit account was established.

10.3 Sec. 2. Minnesota Statutes 2018, section 268.07, subdivision 1, is amended to read:

10.4 Subdivision 1. **Application for unemployment benefits; determination of benefit**
10.5 **account.** (a) An application for unemployment benefits may be filed in person, by mail, or
10.6 by electronic transmission as the commissioner may require. The applicant must be
10.7 unemployed at the time the application is filed and must provide all requested information
10.8 in the manner required. If the applicant is not unemployed at the time of the application or
10.9 fails to provide all requested information, the communication is not an application for
10.10 unemployment benefits.

10.11 (b) The commissioner must examine each application for unemployment benefits to
10.12 determine the base period and the benefit year, and based upon all the covered employment
10.13 in the base period the commissioner must determine the weekly unemployment benefit
10.14 amount available, if any, and the maximum amount of unemployment benefits available,
10.15 if any. The determination, which is a document separate and distinct from a document titled
10.16 a determination of eligibility or determination of ineligibility issued under section 268.101,
10.17 must be titled determination of benefit account. A determination of benefit account must
10.18 be sent to the applicant and all base period employers, by mail or electronic transmission.

10.19 (c) If a base period employer did not provide wage detail information for the applicant
10.20 as required under section 268.044, ~~or provided erroneous information, or wage detail is not~~
10.21 ~~yet due and the applicant is using a base period under section 268.035, subdivision 4,~~
10.22 ~~paragraph (d),~~ the commissioner may accept an applicant certification of wage credits, based
10.23 upon the applicant's records, and issue a determination of benefit account.

10.24 ~~(d) An employer must provide wage detail information on an applicant within five~~
10.25 ~~calendar days of request by the commissioner, in a manner and format requested, when:~~

10.26 ~~(1) the applicant is using a base period under section 268.035, subdivision 4, paragraph~~
10.27 ~~(d); and~~

10.28 ~~(2) wage detail under section 268.044 is not yet required to have been filed by the~~
10.29 ~~employer.~~

10.30 ~~(e)~~ (d) The commissioner may, at any time within 24 months from the establishment of
10.31 a benefit account, reconsider any determination of benefit account and make an amended
10.32 determination if the commissioner finds that the wage credits listed in the determination
10.33 were incorrect for any reason. An amended determination of benefit account must be

11.1 promptly sent to the applicant and all base period employers, by mail or electronic
11.2 transmission. This subdivision does not apply to documents titled determinations of eligibility
11.3 or determinations of ineligibility issued under section 268.101.

11.4 ~~(f)~~ (e) If an amended determination of benefit account reduces the weekly unemployment
11.5 benefit amount or maximum amount of unemployment benefits available, any unemployment
11.6 benefits that have been paid greater than the applicant was entitled is an overpayment of
11.7 unemployment benefits. A determination or amended determination issued under this section
11.8 that results in an overpayment of unemployment benefits must set out the amount of the
11.9 overpayment and the requirement under section 268.18, subdivision 1, that the overpaid
11.10 unemployment benefits must be repaid.

11.11 Sec. 3. **EFFECTIVE DATE.**

11.12 Unless otherwise specified, this article is effective January 1, 2020.

11.13 **ARTICLE 4**

11.14 **UNEMPLOYMENT INSURANCE ADVISORY COUNCIL; HOUSEKEEPING**

11.15 Section 1. Minnesota Statutes 2018, section 268.035, subdivision 15, is amended to read:

11.16 Subd. 15. **Employment.** (a) "Employment" means service performed by:

11.17 (1) an individual who is an employee under the common law of employer-employee and
11.18 not an independent contractor;

11.19 (2) an officer of a corporation;

11.20 (3) a member of a limited liability company who is an employee under the common law
11.21 of employer-employee; ~~or~~

11.22 (4) an individual who is an employee under the Federal Insurance Contributions Act,
11.23 United States Code, title 26, chapter 21, sections 3121 (d)(3)(A) and 3121 (d)(3)(D); or

11.24 ~~(4)~~ (5) product demonstrators in retail stores or other locations to aid in the sale of
11.25 products. The person that pays the wages is the employer.

11.26 (b) Employment does not include service as a juror.

11.27 (c) Construction industry employment is defined in subdivision 9a. Trucking and
11.28 messenger/courier industry employment is defined in subdivision 25b. Rules on determining
11.29 worker employment status are described under Minnesota Rules, chapter 3315.

12.1 Sec. 2. Minnesota Statutes 2018, section 268.044, subdivision 2, is amended to read:

12.2 Subd. 2. **Failure to timely file report; late fees.** (a) Any employer that fails to submit
12.3 the quarterly wage detail report when due must pay a late fee of \$10 per employee, computed
12.4 based upon the highest of:

12.5 (1) the number of employees reported on the last wage detail report submitted;

12.6 (2) the number of employees reported in the corresponding quarter of the prior calendar
12.7 year; or

12.8 (3) if no wage detail report has ever been submitted, the number of employees listed at
12.9 the time of employer registration.

12.10 The late fee is canceled if the wage detail report is received within 30 calendar days
12.11 after a demand for the report is sent to the employer by mail or electronic transmission. A
12.12 late fee assessed an employer may not be canceled more than twice each 12 months. The
12.13 amount of the late fee assessed may not be less than \$250.

12.14 (b) If the wage detail report is not received in a manner and format prescribed by the
12.15 commissioner within 30 calendar days after demand is sent under paragraph (a), the late
12.16 fee assessed under paragraph (a) doubles and a renewed demand notice and notice of the
12.17 increased late fee will be sent to the employer by mail or electronic transmission.

12.18 (c) Late fees due under this subdivision may be canceled, in whole or in part, under
12.19 section ~~268.066~~ where good cause for late submission is found by the commissioner 268.067.

12.20 Sec. 3. Minnesota Statutes 2018, section 268.047, subdivision 3, is amended to read:

12.21 Subd. 3. **Exceptions for taxpaying employers.** Unemployment benefits paid will not
12.22 be used in computing the future tax rate of a taxpaying base period employer when:

12.23 (1) the applicant's wage credits from that employer are less than \$500;

12.24 (2) the applicant quit the employment, unless it was determined under section 268.095,
12.25 to have been because of a good reason caused by the employer or because the employer
12.26 notified the applicant of discharge within 30 calendar days. This exception applies ~~only~~ to
12.27 unemployment benefits paid for periods after the applicant's quitting the employment and,
12.28 if the applicant is rehired by the employer, continues only until the beginning of the week
12.29 the applicant is rehired; or

12.30 (3) the employer discharged the applicant from employment because of employment
12.31 misconduct as determined under section 268.095. This exception applies ~~only~~ to
12.32 unemployment benefits paid for periods after the applicant's discharge from employment

13.1 and, if the applicant is rehired by the employer, continues only until the beginning of the
13.2 week the applicant is rehired.

13.3 Sec. 4. Minnesota Statutes 2018, section 268.085, subdivision 3, is amended to read:

13.4 Subd. 3. **Vacation and sick payments that delay unemployment benefits.** (a) An
13.5 applicant is not eligible to receive unemployment benefits for any week the applicant is
13.6 receiving, has received, or will receive vacation pay, sick pay, or personal time off pay, also
13.7 known as "PTO."

13.8 This paragraph ~~only applies upon temporary, indefinite, or seasonal separation and does~~
13.9 ~~not apply:~~

13.10 (1) upon a permanent separation from employment; or

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

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

13.15 ~~(b) An applicant is not eligible to receive unemployment benefits for any week the~~
13.16 ~~applicant is receiving, has received, or will receive severance pay, bonus pay, or any other~~
13.17 ~~payments paid by an employer because of, upon, or after separation from employment.~~

13.18 ~~This paragraph only applies if the payment is:~~

13.19 ~~(1) considered wages under section 268.035, subdivision 29; or~~

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

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

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

13.29 ~~(c) An applicant is not eligible to receive unemployment benefits for any week the~~
13.30 ~~applicant is receiving, has received, will receive, or has applied for pension, retirement, or~~
13.31 ~~annuity payments from any plan contributed to by a base period employer including the~~

14.1 ~~United States government. The base period employer is considered to have contributed to~~
14.2 ~~the plan if the contribution is excluded from the definition of wages under section 268.035,~~
14.3 ~~subdivision 29. If the pension, retirement, or annuity payment is paid in a lump sum, an~~
14.4 ~~applicant is not considered to have received a payment if:~~

14.5 ~~(1) the applicant immediately deposits that payment in a qualified pension plan or~~
14.6 ~~account; or~~

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

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

14.10 ~~(d)~~ (c) This subdivision applies to all the weeks of payment. The number of weeks of
14.11 payment is determined as follows:

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

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

14.16 ~~For purposes of this paragraph, The~~ "last level of regular weekly pay" includes
14.17 commissions, bonuses, and overtime pay if that is part of the applicant's ongoing regular
14.18 compensation.

14.19 ~~(e)~~ (d) Under this subdivision, if the payment with respect to a week is equal to or more
14.20 than the applicant's weekly unemployment benefit amount, the applicant is ineligible for
14.21 benefits for that week. If the payment with respect to a week is less than the applicant's
14.22 weekly unemployment benefit amount, unemployment benefits are reduced by the amount
14.23 of the payment.

14.24 Sec. 5. Minnesota Statutes 2018, section 268.085, subdivision 3a, is amended to read:

14.25 Subd. 3a. **Workers' compensation and disability insurance offset.** (a) An applicant
14.26 is not eligible to receive unemployment benefits for any week in which the applicant is
14.27 receiving or has received compensation for loss of wages equal to or in excess of the
14.28 applicant's weekly unemployment benefit amount under:

14.29 (1) the workers' compensation law of this state;

14.30 (2) the workers' compensation law of any other state or similar federal law; or

14.31 (3) any insurance or trust fund paid in whole or in part by an employer.

(b) This subdivision does not apply to an applicant who has a claim pending for loss of wages under paragraph (a); however, before unemployment benefits may be paid when a claim is pending, the issue of the applicant being available for suitable employment, as required under subdivision 1, clause (4), is must be determined under section 268.101, subdivision 2. If the applicant later receives compensation as a result of the pending claim, the applicant is subject to ~~the provisions of~~ paragraph (a) and the unemployment benefits paid are ~~subject to recoupment by the commissioner to the extent that the compensation constitutes overpaid unemployment benefits~~ under section 268.18, subdivision 1.

(c) If the amount of compensation described under paragraph (a) for any week is less than the applicant's weekly unemployment benefit amount, unemployment benefits requested for that week are reduced by the amount of that compensation payment.

Sec. 6. Minnesota Statutes 2018, section 268.085, is amended by adding a subdivision to read:

Subd. 3b. Separation, severance, or bonus payments that delay unemployment benefits. (a) An applicant is not eligible to receive unemployment benefits for any week the applicant is receiving, has received, or will receive separation pay, severance pay, bonus pay, or any other payments paid by an employer because of, upon, or after separation from employment. This subdivision applies if the payment is:

(1) considered wages under section 268.035, subdivision 29; or

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

(b) Payments under this subdivision 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.

(c) This subdivision does not apply to earnings under subdivision 5, back pay under subdivision 6, or vacation pay, sick pay, or personal time off pay under subdivision 3.

(d) This subdivision applies to all the weeks of payment. The number of weeks of payment is determined in accordance with subdivision 3, paragraph (c).

(e) Under this subdivision, if the payment with respect to a week is equal to or more than the applicant's weekly unemployment benefit amount, the applicant is ineligible for benefits for that week. If the payment with respect to a week is less than the applicant's

16.1 weekly unemployment benefit amount, unemployment benefits are reduced by the amount
16.2 of the payment.

16.3 Sec. 7. Minnesota Statutes 2018, section 268.085, is amended by adding a subdivision to
16.4 read:

16.5 Subd. 3c. **Pension or retirement payment offset.** (a) An applicant is not eligible to
16.6 receive unemployment benefits for any week the applicant is receiving, has received, will
16.7 receive, or has applied for pension, retirement, or annuity payments from any plan contributed
16.8 to by a base period employer including the United States government. The base period
16.9 employer is considered to have contributed to the plan if the contribution is excluded from
16.10 the definition of wages under section 268.035, subdivision 29.

16.11 (b) If the pension, retirement, or annuity payment is paid in a lump sum, an applicant is
16.12 not considered to have received a payment if:

16.13 (1) the applicant immediately deposits that payment in a qualified pension plan or
16.14 account; or

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

16.17 (c) This subdivision does not apply to Social Security benefits under subdivision 4 or
16.18 4a.

16.19 (d) This subdivision applies to all the weeks of payment.

16.20 If the payment is made in a lump sum, that sum is divided by the applicant's last level
16.21 of regular weekly pay from the employer to determine the weeks of payment.

16.22 The "last level of regular weekly pay" includes commissions, bonuses, and overtime
16.23 pay if that is part of the applicant's ongoing regular compensation.

16.24 (e) Under this subdivision, if the payment with respect to a week is equal to or more
16.25 than the applicant's weekly unemployment benefit amount, the applicant is ineligible for
16.26 benefits for that week. If the payment with respect to a week is less than the applicant's
16.27 weekly unemployment benefit amount, unemployment benefits are reduced by the amount
16.28 of the payment.

17.1 Sec. 8. Minnesota Statutes 2018, section 268.085, subdivision 13a, is amended to read:

17.2 Subd. 13a. **Leave of absence.** (a) An applicant on a voluntary leave of absence is
17.3 ineligible for unemployment benefits for the duration of the leave of absence. An applicant
17.4 on an involuntary leave of absence is not ineligible under this subdivision.

17.5 A leave of absence is voluntary when work that the applicant can then perform is available
17.6 with the applicant's employer but the applicant chooses not to work. A medical leave of
17.7 absence is not presumed to be voluntary.

17.8 (b) A period of vacation requested by the applicant, paid or unpaid, is a voluntary leave
17.9 of absence. A vacation period assigned by an employer under: (1) a uniform vacation
17.10 shutdown; (2) a collective bargaining agreement; or (3) an established employer policy, is
17.11 an involuntary leave of absence.

17.12 (c) A leave of absence is a temporary stopping of work that has been approved by the
17.13 employer. A ~~voluntary~~ leave of absence is not a quit ~~and an involuntary leave of absence~~
17.14 ~~is not~~ or a discharge from employment for purposes of. Section 268.095 does not apply to
17.15 a leave of absence.

17.16 (d) An applicant who is on a paid leave of absence, whether the leave of absence is
17.17 voluntary or involuntary, is ineligible for unemployment benefits for the duration of the
17.18 leave.

17.19 (e) This subdivision applies to a leave of absence from a base period employer, an
17.20 employer during the period between the end of the base period and the effective date of the
17.21 benefit account, or an employer during the benefit year.

17.22 Sec. 9. Minnesota Statutes 2018, section 268.095, subdivision 6, is amended to read:

17.23 Subd. 6. **Employment misconduct defined.** (a) Employment misconduct means any
17.24 intentional, negligent, or indifferent conduct, on the job or off the job, ~~that displays clearly:~~

17.25 ~~(1) is a serious violation of the standards of behavior the employer has the right to~~
17.26 ~~reasonably expect of the employee; or,~~

17.27 ~~(2) a substantial lack of concern for the employment.~~

17.28 (b) Regardless of paragraph (a), the following is not employment misconduct:

17.29 (1) conduct that was a consequence of the applicant's mental illness or impairment;

17.30 (2) conduct that was a consequence of the applicant's inefficiency or inadvertence;

17.31 (3) simple unsatisfactory conduct;

18.1 (4) conduct an average reasonable employee would have engaged in under the
18.2 circumstances;

18.3 (5) conduct that was a consequence of the applicant's inability or incapacity;

18.4 (6) good faith errors in judgment if judgment was required;

18.5 (7) absence because of illness or injury of the applicant, with proper notice to the
18.6 employer;

18.7 (8) absence, with proper notice to the employer, in order to provide necessary care
18.8 because of the illness, injury, or disability of an immediate family member of the applicant;

18.9 (9) conduct that was a consequence of the applicant's chemical dependency, unless the
18.10 applicant was previously diagnosed chemically dependent or had treatment for chemical
18.11 dependency, and since that diagnosis or treatment has failed to make consistent efforts to
18.12 control the chemical dependency; or

18.13 (10) conduct that was a consequence of the applicant, or an immediate family member
18.14 of the applicant, being a victim of domestic abuse, sexual assault, or stalking. For the
18.15 purposes of this subdivision, "domestic abuse," "sexual assault," and "stalking" have the
18.16 meanings given them in subdivision 1.

18.17 (c) Regardless of paragraph (b), clause (9), conduct in violation of sections 169A.20,
18.18 169A.31, 169A.50 to 169A.53, or 171.177 that ~~interferes with or~~ adversely affects the
18.19 employment is employment misconduct.

18.20 (d) If the conduct for which the applicant was discharged involved only a single incident,
18.21 that is an important fact that must be considered in deciding whether the conduct rises to
18.22 the level of employment misconduct under paragraph (a). This paragraph does not require
18.23 that a determination under section 268.101 or decision under section 268.105 contain a
18.24 specific acknowledgment or explanation that this paragraph was considered.

18.25 (e) The definition of employment misconduct provided by this subdivision is exclusive
18.26 and no other definition applies.

18.27 Sec. 10. Minnesota Statutes 2018, section 268.095, subdivision 6a, is amended to read:

18.28 Subd. 6a. **Aggravated employment misconduct defined.** (a) ~~For the purpose of this~~
18.29 ~~section, "aggravated employment misconduct" means:~~

18.30 ~~(1)~~ The commission of any act, on the job or off the job, that would amount to a gross
18.31 misdemeanor or felony is aggravated employment misconduct if the act ~~substantially~~
18.32 ~~interfered with the employment or~~ had a significant adverse effect on the employment; ~~or,~~

A criminal charge or conviction is not necessary to determine aggravated employment misconduct under this paragraph. If an applicant is convicted of a gross misdemeanor or felony, the applicant is presumed to have committed the act.

~~(2)~~ (b) For an employee of a facility as defined in section 626.5572, aggravated employment misconduct includes an act of patient or resident abuse, financial exploitation, or recurring or serious neglect, as defined in section 626.5572 and applicable rules.

~~(b) If an applicant is convicted of a gross misdemeanor or felony for the same act for which the applicant was discharged, it is aggravated employment misconduct if the act substantially interfered with the employment or had a significant adverse effect on the employment.~~

(c) The definition of aggravated employment misconduct provided by this subdivision is exclusive and no other definition applies.

Sec. 11. EFFECTIVE DATE.

Unless otherwise specified, this article is effective October 1, 2019.

ARTICLE 5

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL; TECHNICAL

Section 1. Minnesota Statutes 2018, section 268.044, subdivision 3, is amended to read:

Subd. 3. **Missing or erroneous information.** (a) Any employer that submits the wage detail report, but fails to include all required employee information or enters erroneous information, is subject to an administrative service fee of \$25 for each employee for whom the information is partially missing or erroneous.

(b) Any employer that submits the wage detail report, but fails to include an employee, is subject to an administrative service fee equal to two percent of the total wages for each employee for whom the information is completely missing.

(c) An administrative service fee under this subdivision must be canceled under section 268.067 if the commissioner determines that the failure or error by the employer occurred because of ignorance or inadvertence.

Sec. 2. Minnesota Statutes 2018, section 268.046, subdivision 1, is amended to read:

Subdivision 1. **Tax accounts assigned.** (a) Any person that contracts with a taxpaying employer to have that person obtain the taxpaying employer's workforce and provide workers

to the taxpaying employer for a fee is, as of the effective date of the contract, assigned for the duration of the contract the taxpaying employer's account under section 268.045. That tax account must be maintained by the person separate and distinct from every other tax account held by the person and identified in a manner prescribed by the commissioner. The tax account is, for the duration of the contract, considered that person's account for all purposes of this chapter. The workers obtained from the taxpaying employer and any other workers provided by that person to the taxpaying employer, including officers of the taxpaying employer as defined in section 268.035, subdivision 20, clause ~~(28)~~ (29), whose wages paid by the person are considered paid in covered employment under section 268.035, subdivision 24, for the duration of the contract between the taxpaying employer and the person, must, under section 268.044, be reported on the wage detail report under that tax account, and that person must pay any taxes due at the tax rate computed for that account under section 268.051, subdivision 2.

(b) Any workers of the taxpaying employer who are not covered by the contract under paragraph (a) must be reported by the taxpaying employer as a separate unit on the wage detail report under the tax account assigned under paragraph (a). Taxes and any other amounts due on the wages reported by the taxpaying employer under this paragraph may be paid directly by the taxpaying employer.

(c) If the taxpaying employer that contracts with a person under paragraph (a) does not have a tax account at the time of the execution of the contract, an account must be registered for the taxpaying employer under section 268.042 and the new employer tax rate under section 268.051, subdivision 5, must be assigned. The tax account is then assigned to the person as provided for in paragraph (a).

(d) A person that contracts with a taxpaying employer under paragraph (a) must, within 30 calendar days of the execution or termination of a contract, notify the commissioner by electronic transmission, in a format prescribed by the commissioner, of that execution or termination. The taxpaying employer's name, the account number assigned, and any other information required by the commissioner must be provided by that person.

(e) Any contract subject to paragraph (a) must specifically inform the taxpaying employer of the assignment of the tax account under this section and the taxpaying employer's obligation under paragraph (b). If there is a termination of the contract, the tax account is, as of the date of termination, immediately assigned to the taxpaying employer.

21.1 Sec. 3. Minnesota Statutes 2018, section 268.069, subdivision 1, is amended to read:

21.2 Subdivision 1. **Requirements.** The commissioner must pay unemployment benefits
21.3 from the trust fund to an applicant who has met each of the following requirements:

21.4 (1) the applicant has filed an application for unemployment benefits and established a
21.5 benefit account in accordance with section 268.07;

21.6 (2) the applicant has not been held ineligible for unemployment benefits under section
21.7 268.095 because of a quit or discharge;

21.8 (3) the applicant has met all of the ongoing eligibility requirements under section 268.085;

21.9 (4) the applicant does not have an outstanding overpayment of unemployment benefits,
21.10 including any penalties or interest; and

21.11 (5) the applicant has not been held ineligible for unemployment benefits under section
21.12 268.183 ~~because of a false representation or concealment of facts.~~

21.13 Sec. 4. Minnesota Statutes 2018, section 268.105, subdivision 6, is amended to read:

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

21.16 Except for services provided by an attorney-at-law, no person may charge an applicant
21.17 a fee of any kind for advising, assisting, or representing an applicant in a hearing ~~or~~ on
21.18 reconsideration, or in a proceeding under subdivision 7.

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

21.22 (c) No attorney fees may be awarded, or costs or disbursements assessed, against the
21.23 department as a result of any proceedings under this section.

21.24 Sec. 5. Minnesota Statutes 2018, section 268.145, subdivision 1, is amended to read:

21.25 Subdivision 1. **Notification.** (a) Upon filing an application for unemployment benefits,
21.26 the applicant must be informed that:

21.27 (1) unemployment benefits are subject to federal and state income tax;

21.28 (2) there are requirements for filing estimated tax payments;

21.29 (3) the applicant may elect to have federal income tax withheld from unemployment
21.30 benefits;

(4) if the applicant elects to have federal income tax withheld, the applicant may, in addition, elect to have Minnesota state income tax withheld; and

(5) at any time during the benefit year the applicant may change a prior election.

(b) If an applicant elects to have federal income tax withheld, the commissioner must deduct ten percent for federal income tax. If an applicant also elects to have Minnesota state income tax withheld, the commissioner must make an additional five percent deduction for state income tax. Any ~~amounts~~ amount deducted ~~or offset under sections 268.155, 268.18, and 268.184~~ have section 268.085 has priority over any amounts deducted under this section. Federal income tax withholding has priority over state income tax withholding.

(c) An election to have income tax withheld may not be retroactive and only applies to unemployment benefits paid after the election.

Sec. 6. Minnesota Statutes 2018, section 268.18, subdivision 5, is amended to read:

Subd. 5. **Remedies.** (a) Any method undertaken to recover an overpayment of unemployment benefits, including any penalties and interest, is not an election of a method of recovery.

(b) Intervention or lack thereof, in whole or in part, in a workers' compensation matter under section 176.361 is not an election of a remedy and does not prevent the commissioner from determining an applicant ineligible for unemployment benefits ~~or taking action under section 268.183.~~

Sec. 7. **REVISOR INSTRUCTION.**

The revisor of statutes is instructed to make the following changes in Minnesota Statutes:

(1) delete the term "bona fide" wherever it appears in section 268.035;

(2) replace the term "under" with "subject to" in section 268.047, subdivision 2, clause (8);

(3) replace the term "displays clearly" with "shows" in chapter 268;

(4) replace the term "entire" with "hearing" in section 268.105; and

(5) replace "24 calendar months" with "eight calendar quarters" in section 268.052, subdivision 2.

Sec. 8. **EFFECTIVE DATE.**

Unless otherwise specified, this article is effective October 1, 2019.