

CHAPTER 251--H.F.No. 2949

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;

(+3) (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;

(+4) (15) disability payments made under the provisions of any workers' compensation law;

(+5) (16) sickness or accident disability payments made by a third-party payer such as an insurance company; or

(+6) (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:

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) a taxpaying employer acquires 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.

(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.

(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.

(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.

(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.

(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:

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

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

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

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

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

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

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

~~(e)~~ (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 weekly unemployment benefit amount, unemployment benefits are reduced by the amount of the payment.

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

Subd. 2a. **Employer-agent appeals filed online.** (a) If an agent files an appeal on behalf of an employer, the appeal must be filed online. The appeal must be filed through the electronic address provided on the

determination being appealed. Use of another method of filing does not constitute an appeal. This paragraph does not apply to:

- (1) an employee filing an appeal on behalf of an employer; or
- (2) an attorney licensed to practice law who is directly representing the employer on appeal.

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

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

Subd. 2b. **Interest.** ~~(a)~~ On any unemployment benefits fraudulently obtained, 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.~~

~~(c)~~ 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.

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

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

Sec. 8. **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.

ARTICLE 2

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL HOUSEKEEPING

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

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

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

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

(3) in connection with the production or harvesting of any commodity defined as 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.

Sec. 2. Minnesota Statutes 2012, 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 defined in this paragraph is considered the primary base period.~~ The base period under this paragraph is as follows:

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

(b) If an application for unemployment benefits has an effective date that is during the month following the 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 defined in this paragraph is considered the secondary base period.~~ The base period under this paragraph is as follows:

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

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

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

(2) if an applicant was compensated for a loss of work of 14 to 26 weeks, the base period is the first four of the 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:~~

~~(i) if 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 substantially all of the members of the crew operate or maintain tractors, mechanized harvesting or crop dusting equipment, or any other mechanized equipment, that is provided by the crew leader; and~~

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(i) the employment is performed entirely in Minnesota;~~

~~(ii) (i) the employment during the quarter is performed primarily in Minnesota, and the employment performed outside Minnesota is incidental to the employment in Minnesota; or;~~

~~(iii) (ii) the employment during the quarter is not performed primarily in Minnesota or any one other state but some of the employment is performed in Minnesota and the base of operations or the place from which the employment is directed or controlled is in Minnesota; or~~

~~(iii) the employment during the quarter is not performed primarily in Minnesota or any 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;~~

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

(i) the employment is not considered 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 ~~of,~~ performed entirely outside of the United States and Canada, by an employee who is a United States citizen of the United States, performed outside the United States, except in Canada, in the employ of an American employer if:

~~(i) the employer's principal place of business in the United States is located in Minnesota;~~

~~(ii) the employer has no place of business in the United States, but the employer is an individual who is a resident of Minnesota, or the employer is a corporation that is organized under the laws of Minnesota, or the employer is a partnership or a trust and the number of partners or trustees who are residents of Minnesota is greater than the number who are residents of any one other state;~~

~~(iii) none of the criteria of items (i) and (ii) is met but the employer has elected coverage in Minnesota, or the employer having failed to elect coverage in any state, an applicant has made an application for unemployment benefits under section 268.07, based on the employment;~~

~~(iv) An "American employer," for the purposes of this subdivision 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, 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 individual for an employer during the period covered by the reciprocal arrangement is considered performed entirely within another state;

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

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

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

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

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

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

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

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

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

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

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

(18) domestic employment in a private household, local college club, or local chapter of a college fraternity or sorority performed for a person, only 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;

(19) 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;

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

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

~~(22)~~ (21) 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;

~~(23)~~ (22) 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;

~~(24)~~ (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;

~~(25)~~ (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;

~~(26)~~ (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;

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

~~(28)~~ (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;

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

~~(30)~~ (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;

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

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

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

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

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

~~(36)~~ (35) if employment during one-half or more of any pay period was covered employment, all the employment for the pay period is considered covered employment; but if during more than one-half of any pay period the employment was noncovered 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 when filing continued requests for unemployment benefits if the applicant is receiving, has filed for, or intends to file for, primary Social Security old age benefits ~~for any week during the benefit year.~~

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

(b) If all of the applicant's wage credits were earned while the applicant was claiming Social Security old age benefits, there is no deduction from the applicant's weekly unemployment benefit amount. ~~The purpose~~

~~of this paragraph is to ensure that an applicant who is claiming Social Security benefits has demonstrated a desire and ability to work.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

If the back pay is not paid with respect to a specific period, the back pay must be 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 information asked for is not provided, the communication does not constitute a continued request for unemployment benefits.

(b) The electronic transmission communication must be filed on the date and during the time of day designated for the applicant for filing a continued request by electronic transmission.

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

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

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

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

(c) If the applicant has been designated to file a continued request for unemployment benefits by mail, an applicant may submit the form by facsimile transmission ~~on the day otherwise required for mailing, or within two three calendar weeks following the week in which the date designated occurred for which payment is requested.~~ A form submitted by facsimile transmission must be sent only to the telephone number assigned for that purpose.

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

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

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

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

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

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

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

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

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

Subdivision 1. **Evidentiary Hearing by unemployment law judge.** (a) Upon a timely appeal to a determination having been filed, ~~the department must send, by mail or electronic transmission, a notice of appeal to all involved parties that an appeal has been filed, and that a de novo due process evidentiary hearing will be scheduled. The notice must set out the parties' rights and responsibilities regarding the hearing. The notice must explain that the facts will be determined by the unemployment law judge based upon a preponderance of the evidence. The notice must explain in clear and simple language the meaning of the term "preponderance of the evidence."~~ The department or upon a referral for direct hearing under section 268.101, subdivision 3a, the chief unemployment law judge must set a time and place date for a de novo due process evidentiary hearing and send notice to any involved applicant and any involved employer, by mail or electronic transmission, not less than ten calendar days before the date of the hearing.

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

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

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

~~(d) Regardless of paragraph (e); (e) If the appealing party fails to participate in the 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 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 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 good cause for failing to participate. If the unemployment law judge determines that good cause for failure to participate has not been shown, the unemployment law judge must state that in the order decision issued under paragraph (a) (f).

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

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

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

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

(1) is no longer employed by the department;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) while a request for reconsideration is pending;

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

(4) while a petition is pending.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) If the commissioner finds that any person or agent of a person violated the reporting requirements of section 268.046, the person must be assessed a penalty of \$5,000 or two percent of the quarterly payroll reported in violation of section 268.046, whichever 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 be 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~~1a, 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.

Presented to the governor May 13, 2014

Signed by the governor May 16, 2014, 10:46 a.m.