

SENATE
STATE OF MINNESOTA
EIGHTY-SEVENTH LEGISLATURE

S.F. No. 1229

(SENATE AUTHORS: PEDERSON)

DATE	D-PG	OFFICIAL STATUS
04/18/2011	1389	Introduction and first reading Referred to Jobs and Economic Growth

1.1 A bill for an act
1.2 relating to unemployment compensation; modifying definition of suitable
1.3 employment related to staffing services; modifying payments that delay
1.4 benefits; modifying penalty relating to offers of suitable employment; amending
1.5 Minnesota Statutes 2010, sections 268.035, subdivision 23a; 268.085,
1.6 subdivisions 3, 13c.

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

1.8 Section 1. Minnesota Statutes 2010, section 268.035, subdivision 23a, is amended to
1.9 read:

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

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

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

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

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

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

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

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

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

(g) Employment is not considered suitable if:

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

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

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

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

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

Sec. 2. Minnesota Statutes 2010, 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) vacation pay ~~paid upon temporary, indefinite, or seasonal separation, sick pay, or personal time off pay.~~ This clause does not apply to ~~(i) vacation pay paid upon a permanent separation from employment, or (ii) vacation pay, sick pay, or personal time off pay,~~ paid from a vacation fund administered by a union or a third party not under the control of the employer;

(2) severance pay, bonus pay, ~~sick pay,~~ and 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 only if the payment is considered wages at the time of payment under section 268.035, subdivision 29; or

(3) 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) the applicant immediately deposits that payment in a qualified pension plan or account, or (ii) 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).

(b) 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.

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

Sec. 3. Minnesota Statutes 2010, section 268.085, subdivision 13c, is amended to read:

Subd. 13c. **Offers of suitable employment.** (a) An applicant is ineligible for all unemployment benefits for ~~eight~~ 13 calendar weeks if the applicant, without good cause:

(1) failed to apply for available, suitable employment of which the applicant was advised by the commissioner or an employer;

(2) failed to accept suitable employment when offered; or

(3) avoided an offer of suitable employment.

(b) "Good cause" is a reason that would cause a reasonable individual who wants suitable employment to fail to apply for, accept, or avoid suitable employment. Good cause includes:

(1) the applicant is employed in other suitable employment;

(2) the applicant is in reemployment assistance training;

(3) the applicant formerly worked for the employer and the loss of employment occurred prior to the commencement of a labor dispute, was permanent or for an indefinite period, and the applicant failed to apply for or accept the employment because a labor dispute was in progress at the establishment; or

(4) the applicant formerly worked for the employer and quit that employment because of a good reason caused by the employer.

(c) This subdivision only applies to offers of suitable employment with a new or a former employer and does not apply to any type of job transfers, position reassignments, or changes in job duties or responsibilities during the course of employment with an employer.

(d) The period of ineligibility under this subdivision begins the Sunday of the week the applicant failed to apply for, failed to accept, or avoided suitable employment without good cause.

(e) This subdivision applies to offers of suitable employment that occur before the effective date of the benefit account and that occur during the benefit year.

(f) This subdivision only applies to offers of suitable employment that are considered covered employment under section 268.035, subdivision 12.