

CHAPTER 3315
DEPARTMENT OF JOBS AND TRAINING
EMPLOYER TAXES

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3315.0100 DEFINITIONS.

Subpart 1. **Scope.** Unless the context otherwise requires, terms used in this chapter shall be construed in the sense in which they are defined in Minnesota Statutes, sections 268.03 to 268.24, or in these or other rules of the department.

Subp. 2. **Pay period.** "Pay period" means that period of time during which the wages due on any regular pay day were earned. If the period exceeds 31 days, then 31 days shall be deemed to constitute a pay period.

Statutory Authority: *MS s 268.021*

3315.0200 WAGES.

Subpart 1. **Purpose.** Parts 3315.0200 to 3315.0600 further define "wages" as defined in Minnesota Statutes, section 268.04, subdivision 25, and used in Minnesota Statutes, sections 268.03 to 268.24; parts 3315.0200 to 3315.6200; interpretations; forms; and other official pronouncements issued by the department.

Subp. 2. **Types of wages, generally.** "Wages" means remuneration for serv-

ices. The remuneration may take any form, be paid at various times, and be computed in various ways. Remuneration may be in cash or in a medium other than cash, on the basis of piece work or percentage of profits, or by commission. Remuneration may be paid on an hourly, daily, weekly, monthly, annual, or other basis.

Subp. 3. Paid and payable wages. "Wages" includes remuneration payable and remuneration paid. "Remuneration payable" is wages that have been earned but that were not paid when due. "Remuneration paid" is wages that have been actually or constructively delivered to, or for the benefit of, an employee.

Subp. 4. Types of wages. Wages include the monetary value of:

A. Dwelling unit rent, utilities, meals, exchange of services or other goods or services that are to compensate for an employee's services.

B. Vacation pay or payment in lieu of vacation.

C. Termination, severance, or dismissal payment or payment in lieu of notice whether notice is required or not.

D. That portion of the payment which compensates for services rendered received in the form of an award or allowance in accordance with a contractual agreement or settlement reached through any arbitrator, regulatory agency, or court.

E. Profits, sometimes referred to as dividends, other than those designated as capital gain distributions or return of capital, distributed or allocated to officers and shareholders who perform services for a corporation organized under the rules of subchapter S of the Internal Revenue Code of 1954. The distribution or allocation of undistributed profits is reportable at the time it is received by, or credited to the account of, the officers and shareholders.

F. The value of any consideration, award, bonus, or prize which accrues before separation from employment.

G. Payments for accrued sick leave when not related to a specific absence due to sickness or injury, regardless of whether or not the employer maintains a sick pay plan as defined in Minnesota Statutes, section 268.04, subdivision 25, clause (2).

H. Idle time or standby compensation paid by an employer for a guaranteed minimum number of hours of employment per week when employees are to be available for a specific period of time and payment is made to them for idle time even if they do not render services for the minimum number of hours.

I. 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.

J. Amounts paid to corporate shareholders or officers, although designated as loans, where repayments are not made pursuant to a payoff schedule, lack business purpose and fail to provide for the payment of reasonable interest, if the shareholders or officers perform services for the corporation for remuneration below that which would approximate reasonable compensation for services.

K. Payments made directly or indirectly to an individual to perform or assist in performing the work of any employee of the employer provided that the employer had actual or constructive knowledge that the work was being performed.

L. Payments made for services as a caretaker. Unless there is a contract or other proof to the contrary, remuneration shall be 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.

M. 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 shall be considered as having received an equal share of the remuneration unless there is a contract or other proof to the contrary.

N. An employer's vehicle furnished to an employee to the extent the vehicle is used for personal purposes. If the employee has use of the vehicle without charge, the amount deemed to be wages shall be \$200 per month or, if for less than a calendar month, \$7 for each day that the employee has use of the vehicle for personal purposes. If the employee reimburses the employer for the use of the vehicle, the amount deemed to be wages shall be determined as follows:

(1) if the employee reimburses the employer at an established rate of less than 20 cents per mile for each mile of personal use, the amount deemed to be wages shall be the difference, if any, between the amount reimbursed and 20 cents per mile; or

(2) if the employee reimburses the employer at an established daily, weekly, or monthly rate, the amount deemed to be wages shall be the difference, if any, between the amount reimbursed and \$200 per month or, if for less than a month, \$7 for each day that the employee has use of the vehicle for personal purposes.

O. Amounts withheld or deducted from an employee's earnings because of a deferred compensation agreement which an employee agrees to participate in or which is part of an employment contract. A deferred compensation agreement generally means an arrangement between the employee and the employer for the withholding or deduction of a specific amount from his earnings, to be distributed to the employee by the employer or a third person at a later time, usually in postretirement years.

Statutory Authority: *MS s 268.021*

3315.0300 TIPS AND GRATUITIES AS WAGES.

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

- A. added to the customer's bill by the employer;
- B. added to the bill by a customer using credit for the purchase;
- C. disbursed by the employer from a tip pool; or
- D. reported to the employer in compliance with the Internal Revenue Code of 1954.

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

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

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

Statutory Authority: *MS s 268.021*

3315.0400 VALUING NONCASH REMUNERATION.

Except as parts 3315.0200 to 3315.0600 may otherwise provide, the cash value of remuneration for personal services payable in any medium other than cash shall be:

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

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

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

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

Statutory Authority: *MS s 268.021*

3315.0500 EMPLOYEE EQUIPMENT.

Subpart 1. Trucks, bulldozers, tractors. The wages of the operator and supplier of a truck, bulldozer, tractor, or similar equipment whose remuneration includes wages for personal services as well as the cost of operating and hiring the equipment shall, in the absence of an agreement between the parties, be determined as follows:

A. the value of that part of the total remuneration received which is wages for personal services shall not be less than the prevailing wage scale for similar services by operators of equipment of the same size and type in the locality where the services are performed; or

B. if there is no prevailing wage in the locality in which the services are performed, 40 percent of the total remuneration received from the employer shall constitute wages.

Subp. 2. Advances or reimbursements as wages. Payments to an employee that include advances or reimbursements for use of his personal vehicle of up to 9,000 pounds gross vehicle weight in the employer's business are wages unless the amount attributable to the use of the vehicle is separately paid or stated as prescribed in part 3315.0600, item H and the advance or reimbursement is not unreasonable or arbitrary in which case only the amount attributable to services performed shall be wages.

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

Statutory Authority: *MS s 268.021*

3315.0600 EXEMPT WAGES.

The term "wages" shall not include:

A. the value of any special discount or markdown allowed to an employee in goods purchased from or services supplied by the employer where the purchases are optional and do not constitute regular or systematic remuneration for services rendered;

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

C. moneys allowed to employees for reimbursement of meal expenses when employees are required to perform work after their regular hours;

D. any payment made to or on behalf of an employee by the employer for legal or dental service plans if provided for all employees generally or for a class or classes of employees;

E. payments for periods of sickness or injury after the end of six calendar months after the calendar month in which the employee last worked for the

employer, if the payments are made by an employer who does not maintain a regular sick pay plan as defined in Minnesota Statutes, section 268.04, subdivision 25, clause (2);

F. compensation, reimbursement, fees, meals, or other remuneration paid or provided through a court to an individual for services performed as a juror;

G. royalties to an owner of a franchise, license, copyright, patent, oil, mineral, or other right;

H. amounts paid specifically as 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);

I. remuneration paid to radio and television artists which represents residual payments and which is accrued subsequent to the production of musical jingles, spot announcements, radio transcriptions, and film sound tracks; or

J. any payment to or on behalf of an employee under a plan or system established by an employer, which makes provisions for his employees generally or for a class or classes of his employees for the supplementation of unemployment benefits under the written terms of an agreement, contract, trust arrangement, or other instrument if the plan or system provides benefits which are only supplemental to, and does not replace or duplicate any state or federal unemployment compensation. The plan or system must provide that funds are to be used solely for the supplementation of state unemployment benefits. Potential recipients of the plan or system must be required to file for unemployment benefits in accordance with state law. The plan or system shall not allow the assignment of benefits or the payment of any consideration in lieu of any benefit upon the employee's withdrawal from the plan or system, his termination of employment or the termination of the plan or system. The plan or system must not be designed for the purpose of avoiding the payment of unemployment taxes on moneys disbursed from its plan or system.

Statutory Authority: *MS s 268.021*

EMPLOYMENT

3315.0700 DEFINITIONS.

Subpart 1. **Scope.** For the purpose of parts 3315.0700 to 3315.2200 the following terms have the meaning given to them.

Subp. 2. **Control.** "Control" is the power to instruct, direct, or regulate the activities of an individual whether or not the power is exercised.

Subp. 3. **Employing unit.** "Employing unit" has the meaning given to it in Minnesota Statutes, section 268.04, subdivision 9, and includes any individual or type of organization that engages, retains, or secures the services of, an individual.

Subp. 4. **Employment.** "Employment" has the meaning given to it in Minnesota Statutes, section 268.04, subdivision 12, and includes the services of any individual performed for an employing unit under its direction, rule, or control as to both the method of performing or executing the services and the result to be effected or accomplished. Whether an individual is performing services in employment shall be determined by the preponderance of the evidence.

Subp. 5. **Method.** "Method" is the way, procedure, or process for doing something; the means in attaining a result as distinguished from the result itself.

Statutory Authority: *MS s 268.021*

3315.0800 OBTAINING A DETERMINATION OR OPINION.

If an employing unit is unsure of the status of an individual performing services for it, the employing unit may obtain a written determination by submitting all relevant facts to the commissioner on questionnaires prescribed for these determinations. The determination shall be final unless a written protest is filed with the commissioner as set forth in Minnesota Statutes, section 268.12, subdivision 13. If any person contemplates hiring or engaging a worker to perform services and is unsure if the services would be deemed employment, a written opinion may be obtained by submitting information about the proposed work arrangement, as the hiring person perceives it will be, on questionnaires prescribed by the commissioner. The commissioner's opinion does not have the effect of a determination and is not subject to appeal. The person requesting the opinion shall clearly indicate that the situation is hypothetical and that an opinion, rather than a determination, is being sought. If an individual is hired or engaged to perform the services in question, a determination may be obtained. This part in no way limits the department's authority under Minnesota Statutes, section 268.12, subdivision 13, clause (1) to make determinations on its own motion.

Statutory Authority: *MS s 268.021*

3315.0900 PROCEDURES FOR DETERMINING CONTROL.

The department shall determine if control exists by:

- A. reviewing written contracts between the individual and the employing unit;
- B. interviewing the individual or employing unit;
- C. obtaining statements of third parties;
- D. examining regulatory statutes governing the organization, trade, or business;
- E. examining the books and records of the employing unit; and
- F. making any other investigation necessary to determine if the elements of control specified in part 3315.1000 exist.

Statutory Authority: *MS s 268.021*

3315.1000 EVIDENCE OF CONTROL.

Subpart 1. Determination of control. Subparts 2 to 14 describe criteria for determining if there is control over the method of performing or executing services. The total circumstances must be considered to determine if control is present.

Subp. 2. Authority over individual's assistants. Control over the individual is indicated when the employing unit hires and pays the individual's assistants and supervises the details of the assistant's work.

Subp. 3. Compliance with instructions. Control is indicated when an individual is required to comply with detailed instructions about when, where, and how he is to work including the order or sequence in which the service is to be performed. Mere suggestions as to detail or necessary and usual cooperation where the work furnished is part of a larger undertaking, does not normally evince control. Some individuals may work without receiving instructions because they are highly proficient in their line of work; nevertheless, the control factor is present if the employing unit has the right to instruct or direct the methods for doing the work and the results achieved. Instructions may be oral or may be in the form of manuals or written procedures which show how the desired result is to be accomplished. However, instructions required by state or federal law or regulation or general instructions passed on by the employing unit from a client or customer, generally does not evince control.

Subp. 4. Oral or written reports. Control is indicated if regular oral or written

reports relating to the method in which the services are performed must be submitted to the employing unit. Periodic reports relating to the accomplishment of a specific result may not be indicative of control if, for example, the reports are used to establish entitlement to partial payment based upon percentage of completion of a job, or the reports are needed to determine compliance with the terms of a contract. Completion of receipts, invoices, and other forms customarily used in the particular type of business activity or required by law does not constitute written reports.

Subp. 5. Place of work. Doing the work on the employing unit's premises is not control in itself; however, it does imply that the employer has control, especially when the work could be done elsewhere. When work is done off the premises it does indicate some freedom from control; however, in some occupations, the services are necessarily performed away from the premises of the employing unit and are still considered to be in employment.

Subp. 6. Personal performance. Control is indicated if the services must be personally rendered to the employing unit. Personal performance of a very specialized work, when the worker is hired on the basis of professional reputation, as in the case of a consultant known in the academic and professional circles to be an authority in the field, is a less reliable indicator of control. Lack of control may be indicated when an individual has the right to hire a substitute without the employing unit's knowledge or consent.

Subp. 7. Existence of a continuing relationship. The existence of a continuing relationship between an individual and the person for whom he performs services is a factor tending to indicate the existence of an employer-employee relationship. Continuing services may include work performed at frequently recurring, though somewhat irregular intervals, either on call of the employing unit or whenever work is available.

Subp. 8. Right to discharge. The right to discharge is a very important factor indicating that the right to control exists particularly if the individual may be terminated with little notice, without cause, or for failure to follow specified rules or methods. An independent worker generally cannot be terminated if he produces an end result which measures up to his contract specifications. Contracts which provide for termination upon notice or for specified acts of nonperformance or default are not solely determinative of the right to control. That a right to discharge is restricted because of a contract with a labor union or with other entities does not mean there is not control.

Subp. 9. Set hours of work. The establishment of set hours of work by the employing unit indicates control. Where fixed hours are not practical because of the nature of the occupation, a requirement that the worker work at certain times is an element of control.

Subp. 10. Training. Training of an individual by an experienced employee working with him, by required attendance at meetings, and by other methods, is a factor of control especially if the training is given periodically or at frequent intervals.

Subp. 11. Amount of time. If the worker must devote his full time to the activity, control is indicated. Full time does not necessarily mean an eight-hour day or a five- or six-day week. Its meaning may vary with the intent of the parties, the nature of the occupation and customs in the locality. Full-time services may be required even though not specified in writing or orally. For example, a person may be required to produce a minimum volume of business which compels him to devote all of his working time to that business, or he may not be permitted to work for anyone else.

Subp. 12. Tools and materials. The furnishing of tools, materials, and supplies by the employing unit is indicative of control over the worker. When the worker furnishes these items it indicates a lack of control, but lack of control is

not indicated if the individual provides tools or supplies customarily furnished by workers in the trade.

Subp. 13. Expense reimbursement. Payment by the employing unit of either the worker's approved business or traveling expenses, or both, is a factor indicating control over the worker. A lack of control is indicated when the worker is paid on a job basis and has to take care of all incidental expenses.

Subp. 14. Satisfying requirements of regulatory and licensing agencies. If an employing unit is required to enforce standards or restrictions imposed by regulatory or licensing agencies, such action does not evince control.

Statutory Authority: *MS s 268.021*

3315.1100 INDEPENDENT CONTRACTOR OR EMPLOYEE, FACTORS TO CONSIDER.

Subpart 1. Factors. Among the factors to be considered, in addition to factors of control, when determining if services are employment are those listed in subparts 2 to 9.

Subp. 2. Availability to public. That an individual makes his services available to the general public on a continuing basis is usually indicative of independent status. An individual may offer his services to the public in a number of ways including having his own office and assistants, displaying a sign in front of his home or office, holding a business license, having a listing in a business directory or a business listing in a telephone directory, or advertising in a newspaper, trade journal, or magazine.

Subp. 3. Compensation on job basis. A person working in employment is usually paid by the hour, week, or month. Payment on a job basis is customary where the worker is independent. Payment by the job may include a predetermined lump sum which is computed by the number of hours required to do the job at a fixed rate per hour or periodic partial payments based upon a percent of the total job price or the amount of the total job completed. The guarantee of a minimum salary or the granting of a drawing account at stated intervals with no requirement for repayment of the excess over earnings indicates the existence of employment.

Subp. 4. Realization of profit or loss. An individual who is in a position to realize a profit or suffer a loss as a result of his services is generally independent, while the individual who is working in employment is not in that position.

Subp. 5. Obligation. An individual working in employment usually has the right to end his relationship with his employer at any time he wishes without incurring liability, although he may be required to provide notice of his termination for some period in advance of the termination. An independent worker usually agrees to complete a specific job. He is responsible for its satisfactory completion and is liable for failure to complete the job.

Subp. 6. Substantial investment. A substantial investment by a person in facilities used by him in performing services for another tends to show an independent status. The furnishing of all necessary facilities by the employing unit tends to indicate the absence of an independent status. Facilities include equipment or premises necessary for the work, but not tools, instruments, clothing, and similar items that are provided by individuals working in employment as a common practice in their particular trade. A substantial expenditure of time or money for an individual's education is not necessarily indicative of an independent relationship. Substantial investment means a monetary investment representing something of considerable worth, in relation to the overall requirements of the person's chosen profession, trade, occupation, or vocation.

Subp. 7. Simultaneous contracts. If an individual works for a number of persons or firms at the same time, it indicates an independent status because the worker is usually free from control by any of the firms. It is possible that a person

may work for a number of people or firms and still be an employee of one or all of them.

Subp. 8. Responsibility. An employing unit is usually responsible for the negligence, personal behavior, and work actions of a person working in employment in his contacts with customers and the general public during times that he is performing services for the employing unit. An independent worker is usually accountable for his own actions.

Subp. 9. Services in the course of the employing unit's organization, trade, or business. Services that are in the course of the employing unit's organization, trade, or business consist of services which are a part or process of the employing unit's organization, trade, or business and ancillary or incidental services. Services which are a part or process of the employing unit's trade or business are generally performed by individuals in employment. Therefore, it is a consideration in determining the status of an individual. This consideration, as with all other considerations, is not a sole determinative factor. "Part" and "process" are not synonymous. Process refers to those services which directly carry out the fundamental purposes for which the organization, trade, or business exists, for example, painting and repairing automobile bodies in an automobile body paint and repair shop. Part refers to any other services which are essential to the operation or maintenance of the organization, trade, or business, for example, routine cleaning of premises and maintenance of tools, equipment, and buildings. Ancillary or incidental services include landscaping the areas around an automobile body paint and repair shop. Other services that meet the part, process, or ancillary classification are those services in connection with purchasing, receiving, storing, pricing, displaying, selling, and delivery of merchandise and house-keeping services required for the safety and comfort of customers and the general public or to maintain the premises in a manner as to promote business.

Statutory Authority: *MS s 268.021*

3315.1200 INDEPENDENT STATUS, DETERMINATION.

When determining if an individual is in employment or is an independent contractor the factors considered must be weighed to make a determination of the relationship under the facts of the particular case. There are five essential factors to be considered. The two most important are those:

A. that indicate the right or the lack of the right to control the means and manner of performance; and

B. to discharge the worker.

The other essential factors to be considered are: the mode of payment; furnishing of materials and tools; and control over the premises where the work is performed.

Other factors, including some not specifically identified in parts 3315.0700 to 3315.2200, may be considered if a determination is inconclusive when applying the essential factors, and the degree of their importance may vary depending upon the occupation or work situation being considered and why the factor is present in the particular situation.

Statutory Authority: *MS s 268.021*

3315.1300 AGENT-DRIVERS AND SALESPERSONS.

Subpart 1. Statutory employees. Certain classes of agent-drivers, salespersons, and commission persons are statutory employees even though they are independent contractors under common law rules. Minnesota Statutes, section 268.04, subdivision 12, clause (1)(b) sets forth the conditions which must be present for members of each class to be employees.

Subp. 2. Full-time. In the case of a traveling or city salesperson, other than an agent-driver or commission-driver, Minnesota Statutes, section 268.04, subdi-

vision 12 provides that the individual must be engaged on a full-time basis. "Full-time" means the number of hours in the calendar week during which individuals engaged in the same or similar occupations usually or customarily perform services, except that any week during which an individual worked 40 hours or more providing those services shall be deemed to be full-time.

Subp. 3. **Substantial investment in facilities.** Agent-drivers, commission-drivers, and traveling or city salespersons to be employees must not have a substantial investment in facilities, other than facilities for transportation, used in connection with the performance of the services.

"Facilities" means equipment or premises necessary to perform the work. Inventory, clothing, and items not actually required to adequately perform the assigned tasks are not facilities.

"Substantial investment" refers to a monetary investment representing something of considerable worth in relation to the overall investment requirements in the distribution or sale of the particular product involved.

Statutory Authority: *MS s 268.021*

3315.1400 IN EMPLOYMENT BY FEDERAL LAW.

An individual is in employment if he performs services which are subject to section 3300 of the Internal Revenue Code of 1954 (Federal Unemployment Tax Act) or performs services which are required by federal law to be covered employment by state law.

Statutory Authority: *MS s 268.021*

3315.1500 IN EMPLOYMENT, GENERAL INCLUSIONS.

The following services described in items A to C are considered to be in employment:

A. Services performed by an employee as an insurance agent, insurance solicitor, or real estate salesperson for the pay period in which payments for the services not constituting commissions were paid or became due and payable. The exclusionary provisions of Minnesota Statutes, section 268.04, subdivision 12, clauses (15)(m) and (o) apply to services which require a Minnesota real estate or insurance agent's sales license and to those individuals, except corporate officers, possessing the license. Services of corporate officers, who are employees by statute, shall not be considered in the application of this exclusionary provision. Noncommission remuneration includes guaranteed salary, training allowance, bonus, and draws or advances against future earnings as described in part 3315.0200, subpart 4, item I. For the purpose of this item commission means remuneration paid to individuals as a direct result of a sale, including the percentage of the sale price paid to the salesperson responsible for the sale, and payments including overrides, listing fees, and closing fees which are related to the sale.

B. Services performed as election judges.

C. Services performed by factory demonstrators who are placed by a manufacturer or distributor in stores and other locations to aid in the sale of products, who are hired by, who are paid directly or indirectly by, and who work under the direction of the manufacturer or distributor, although this direction may be delegated to the retailer, are in the employment of the manufacturer or distributor making the placement. If the retailer, not acting as an agent for the manufacturer or distributor, hires, directs, and pays the demonstrator directly, the retailer is the employer. If the wages are paid in part by the manufacturer or distributor, and in part by the retailer, the demonstrator is in the employment of both. Each is required to pay contributions on the part of the remuneration which it pays, provided that it is an employer under Minnesota Statutes, sections 268.03 to 268.24.

Statutory Authority: *MS s 268.021*

3315.1600 CASUAL LABOR.

Subpart 1. **Considered employment.** Casual labor not in the course of the employing unit's trade or business, although excluded from the term employment by Minnesota Statutes, section 268.04, subdivision 12, clause (15)(b), is conditionally included as employment under the provisions of chapter 23, section 3300 of the Internal Revenue Code of 1954 (federal Unemployment Tax Act). Minnesota Statutes, section 268.04, subdivision 12, clause (6) provides that the term employment shall include any service which is deemed to be employment under the Federal Unemployment Tax Act; therefore, casual labor is considered employment unless it meets the exclusionary provisions of that act. The exclusionary provisions of that act are in subpart 2.

Subp. 2. **Exclusions.** Service not in the course of the employing unit's trade or business, performed in any calendar quarter by an employee is excluded employment unless the cash remuneration earned for the service is \$50 or more, and the service is performed by an individual who is regularly employed by the employing unit. For the purpose of this subpart, an individual shall be deemed to be regularly employed if for some portion of each of 24 days or more, whether or not consecutive, during the current or preceding quarter the individual performs service that is not in the course of the employing unit's trade or business. Cash remuneration includes checks and other monetary media of exchange. Remuneration paid in any other medium, such as lodging, food, or other goods or commodities, is disregarded in determining if the cash remuneration test is met. Casual labor not in the course of the employing unit's trade or business includes service that does not promote or advance the trade or business of the employing unit; for example, work performed in connection with the employing unit's hobby or recreational activities, or work as an employee in repairing the employing unit's private home. Service for a corporation cannot be considered as nonbusiness or casual labor.

Statutory Authority: *MS s 268.021*

3315.1700 LOCALIZED EMPLOYMENT.

If an employee works in more than one state, it is necessary to determine if the employment is localized in and reportable to Minnesota. In making this determination, only the regular services for which the employee was hired, and not those characterized as incidental, temporary, transitory, or an isolated transaction are to be considered. An employee's services are considered localized in Minnesota in any calendar quarter in which 80 percent or more of his regular services are performed in Minnesota.

Regular services include those services performed in an office located in the home of the employee if all of the following conditions are met: the employer does not provide other facilities; the office meets the requirements of the Internal Revenue Code of 1954 for the deduction of business related expenses; and the services performed are an integral part of the employee's regular duties.

Incidental, temporary, transitory, and isolated services include:

A. attending periodic meetings or returning to one's residence which is located outside his area or territory, by salespersons or others who normally perform services within a given area or territory; and

B. any other services which are apart from or not a permanent part of an employee's regular duties.

Statutory Authority: *MS s 268.021*

3315.1800 MULTISTATE EMPLOYMENT.

Subpart 1. **Multistate worker.** When an individual's services are not localized, and absent any reciprocal agreement provided for in Minnesota Statutes, section 268.13, subdivision 1, clause (1), the employee is a "multistate" worker and the application of the tests listed in subparts 2 to 5 is required, to determine whether the services are reportable to Minnesota.

Subp. 2. Base of operations. If an individual's services are not localized in any state and some services, other than those determined to be incidental, temporary, transitory, or isolated transactions, are performed in Minnesota and the base of operations is in Minnesota, the employee's entire services are reportable to Minnesota. "Base of operations" means the place, usually permanent in nature, from which the employee starts his work, to which he customarily returns, and to which the employer may direct instructions to the employee. A branch office of the employer or the place of residence of the employee could be a base of operations.

Subp. 3. Direction and control. If an individual's services are not localized in any state and the base of operations test does not apply, all of the services are reportable to Minnesota if Minnesota is the state from which the employer exercises general direction and control over the employee, and if some services, other than those determined to be incidental, temporary, transitory, or isolated services, are performed in Minnesota.

Subp. 4. Residence. If an individual's services are not localized within any state and the base of operations and the direction and control tests do not apply, the individual's entire services are reportable to Minnesota if the individual's residence is located in Minnesota and some services, other than those determined to be incidental, temporary, transitory, or isolated transactions are performed in Minnesota.

Subp. 5. Service not covered under laws of any other state or Canada. If subparts 2 to 4 do not apply, and the individual's services are not covered under the laws of any other state or Canada, the services are covered under Minnesota Statutes, sections 268.03 to 268.24 if the services are directed and controlled from Minnesota.

Statutory Authority: *MS s 268.021*

3315.1900 EMPLOYMENT PARTIALLY EXEMPT WITHIN A PAY PERIOD; 50 PERCENT RULE.

Minnesota Statutes, section 268.04, subdivision 12, clause (15)(p) does not apply to an individual who performs services as an independent contractor and in employment within the same pay period, but does apply to all employment defined in Minnesota Statutes, section 268.04, subdivision 12, except clauses (10)(a) and (b), relating to certain employees of religious organizations.

If an individual's services within the pay period consist of 50 percent or more of excluded employment none of that individual's services for that pay period are taken into account nor does any of that individual's remuneration for that pay period constitute wages.

Although not applicable to services by an individual referred to in Minnesota Statutes, section 268.04, subdivision 12, clauses (10)(a) and (b), other services performed by the same individual are subject to all other provisions of Minnesota Statutes, sections 268.03 to 268.24.

Statutory Authority: *MS s 268.021*

3315.2000 PREVIOUSLY EXCLUDED EMPLOYMENT.

If within a calendar year an individual's services and remuneration should no longer be excluded because his employing unit has met the employment or wage requirement for that individual's class of workers, all of the previously excluded employment for that class within the same calendar year is subject to the provisions of Minnesota Statutes, sections 268.03 to 268.24. The previously excluded wages for all workers in that class of employment are reportable in the calendar quarters in which the wages were paid or were due and payable.

Statutory Authority: *MS s 268.021*

3315.2100 EMPLOYMENT, GENERAL EXCLUSIONS.

Minnesota Statutes, section 268.04, subdivision 12, clause (10)(d) excludes services which are performed as part of a program designed to relieve unemployment, if the specific program, and not just the employing unit, is assisted or financed by any federal agency or an agency of a state or political subdivision thereof. "Assistance" may be in the form of supervision, advice in organizing and operating the program, but it must be substantial and continuing. Occasional, intermittent, or incidental services would not be sufficient to invoke the exclusion. Where other than incidental physical facilities or material are furnished the program by a federal agency, the state or any of its political subdivisions, the program has been "assisted or financed."

Statutory Authority: *MS s 268.021*

3315.2200 EMPLOYMENT, SPECIAL EXCLUSION.

In the trucking industry, an owner-operator of a vehicle which is licensed and registered as a truck, tractor, or truck-tractor by a governmental motor vehicle regulatory agency is an independent contractor, not an employee, while performing services in the operation of his truck, if each of the following factors is substantially present:

A. the individual owns the equipment or holds it under a bona fide lease arrangement;

B. the individual is responsible for the maintenance of the equipment;

C. the individual bears the principal burdens of the operating costs, including fuel, repairs, supplies, vehicle insurance, and personal expenses while on the road;

D. the individual is responsible for supplying the necessary personal services to operate the equipment;

E. the individual's compensation is based on factors related to the work performed including a percentage of any schedule of rates or lawfully published tariff and not on the basis of the hours or time expended;

F. the individual generally determines the details and means of performing the services, in conformance with regulatory requirements, operating procedures of the carrier, and specifications of the shipper; and

G. the individual enters into a contract that specifies the relationship to be that of an independent contractor and not that of an employee.

Statutory Authority: *MS s 268.021*

AGRICULTURAL LABOR**3315.2300 PURPOSE.**

Parts 3315.2300 to 3315.3100 further define and clarify terms used in Minnesota Statutes, section 268.04, subdivision 12, clause (15)(a) and in parts 3315.2300 to 3315.3100.

Statutory Authority: *MS s 268.021*

3315.2400 DEFINITIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

Statutory Authority: *MS s 268.021*

3315.2500 FARMS, EXCLUSIONS.

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

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

Statutory Authority: *MS s 268.021*

3315.2600 FARMS, INCLUSIONS.

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

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

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

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

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

Statutory Authority: *MS s 268.021*

3315.2700 CROP PURCHASE AGREEMENTS, FARMS, AGRICULTURAL LABOR.

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

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

Statutory Authority: *MS s 268.021*

3315.2800 AGRICULTURAL LABOR ON FARMS.

Services connected with the following activities must be performed on a farm as defined in Minnesota Statutes, section 268.04, subdivision 12, clause (15)(a)(5) and in parts 3315.2300 to 3315.3100, to be agricultural labor:

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

D. clerical, bookkeeping, and other office work in conjunction with the services referred to in Minnesota Statutes, section 268.04, subdivision 12, clause (15)(a)(1); or

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

Statutory Authority: *MS s 268.021*

3315.2900 AGRICULTURAL LABOR, CONDITIONAL SITUATIONS.

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

Subp. 2. **Clerical work.** Record keeping and other clerical or office work performed in connection with the functions described in Minnesota Statutes, section 268.04, subdivision 12, clauses (15)(a)(2) and (4) unless they are:

- A. performed in the employ of the owner or tenant or other operator of a farm;
- B. rendered in major part on a farm; and
- C. performed incidentally to ordinary farming operations.

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

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

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

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

Subp. 5. **Land clearance.** Services in the clearing of stumps, brush, and debris

from land in preparation for its use as a farm, unless done in the employ of the owner tenant or other operator of the farm.

Statutory Authority: *MS s 268.021*

3315.3000 AGRICULTURAL LABOR EXCLUSIONS.

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

A. breeding, raising, and caring for mice, rats, and other rodents and creatures commonly held for sale in pet shops or raised for research and experimental purposes;

B. breeding, raising, caring for, exhibiting, and boarding dogs and cats;

C. racing, exhibiting, and boarding horses, including services connected with a riding stable or academy;

D. lumbering or landscaping;

E. collecting and processing maple sap into maple syrup or sugar;

F. trapping animals;

G. harvesting native wild rice not grown on land developed specifically for that purpose; or

H. raising and harvesting worms.

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

Statutory Authority: *MS s 268.021*

3315.3100 AGRICULTURAL LABOR, SEPARATE COMMODITIES.

The services with respect to each commodity are to be considered separately in determining whether the conditions set forth in Minnesota Statutes, section 268.04, subdivision 12, clause (15)(a)(4) have been satisfied.

Statutory Authority: *MS s 268.021*

DOMESTIC SERVICE

3315.3200 PURPOSE.

Parts 3315.3200 to 3315.3500 further define and clarify terms used in Minnesota Statutes, section 268.04, subdivision 12, clause (14) and in parts 3315.3200 to 3315.3500.

Statutory Authority: *MS s 268.021*

3315.3300 DEFINITIONS.

Subpart 1. Domestic service. "Domestic service" means work ordinarily performed as an integral part of household duties that contribute to the maintenance of the employer's private home or administers to the personal wants and comforts of the employer and other members of the employer's household. In general "domestic service" includes work performed by cooks, waiters, waitresses, butlers, housekeepers, housemen, watchmen, governesses, maids, companions, nursemaids, valets, babysitters, laundresses, furnace men, caretakers, gardeners, footmen, grooms, seamstresses, handymen, and chauffeurs of family automobiles. Domestic service performed for fraternities and sororities also includes services performed by housemothers.

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

Subp. 3. Private home. "Private home" means the fixed abode of one or more persons. Any shelter used as a dwelling may be considered as a private home including a tent, boat, trailer, or a room or suite in a hospital, hotel, sanatorium, or nursing home. A cooperative boarding and lodging facility may also be a

private home. In an apartment house, each apartment, together with its stairways, halls, and porches is a private home. Parts of the premises devoted to common use, such as an office, furnace room, lawns, public stairways, halls, and porches, are not a part of the private home. If a facility is used mainly as a commercial rooming or boarding house only that part of the house which is used as the operator's living quarters is considered to be a private home.

Statutory Authority: *MS s 268.021*

3315.3400 DOMESTIC SERVICE, GENERAL.

Subpart 1. Nondomestic service, treatment. If service performed by an employee in or around the private home of an employing unit is not domestic service within the meaning of parts 3315.3200 to 3315.3500, it is subject to the other provisions of Minnesota Statutes, section 268.04, subdivision 12.

Subp. 2. Maintenance of employer's private home. Domestic service in connection with the maintenance of an employer's private home is service which contributes directly to the protection, cleaning, and normal maintenance, in contrast to major repair projects, of the home and surrounding area. It does not include service which is not ordinarily a part of home duties or which involves the use of skilled or specialized training including service performed by persons in the construction trades.

Subp. 3. Administering to personal wants and comforts of employer. Certain services, although performed in or around the private home of the employer are not domestic services because they are too remotely associated with the requirement that they administer to the personal wants and comforts of the employer. Examples of nondomestic services include those performed by a private or social secretary, tutor, librarian, bookbinder, museum assistant, and medical nurse.

Subp. 4. Domestic service performed by relatives. Domestic service performed by relatives, other than that excluded from employment by Minnesota Statutes, section 268.04, subdivision 12, clause (15)(d), is domestic service within parts 3315.3200 to 3315.3500 if there is a contractual agreement between a relative and the employing unit.

Subp. 5. Service performed by employees of landlords or rental agencies. Service of a household nature performed in or around rental units by employees of landlords and rental agencies is not domestic service. Service performed by domestic workers in and around the private home of the landlord is not within this exception.

Subp. 6. Workers obtained through referral or placement agency. Domestic workers referred to jobs through employment placement agencies that neither supervise nor pay them directly are in the employ of the recipient of the services. However, if an agency is in the business of providing temporary services to clients the agency is the employing unit and the workers are not providing domestic services.

Subp. 7. Service performed for a minister, priest, rabbi, or any other member of a religious order. Service performed in the private home of a minister, priest, rabbi, or any member of a religious order is considered domestic service if the worker is in the employ of the recipient of the service. If the worker is in the employ of the church or religious order the service is excluded employment. The recipient of the service is the employer if the funds for the payment of the domestic worker are not specifically provided by the church or religious order. Funds provided by a congregation of a church are considered as being provided by the church. If funds are not provided by the church specifically for domestic service and the spouse hires, directs, and otherwise controls the worker, the spouse is the employer.

Subp. 8. Registered and licensed practical nurses. Registered nurses performing private duty services are generally performing service as independent contractors if they have full discretion in administering their professional services

and are not subject to direction and control. Registered and licensed practical nurses who are engaged by hospitals, nursing homes, physicians, government agencies, or commercial businesses generally are not performing services as an independent contractor and the services are nondomestic.

Subp. 9. **Nurses aides and patient helpers.** Nurses aides and patient helpers who are engaged to perform services in the private home of the patient, although they may occasionally administer medication, are usually performing services that are primarily domestic in nature. Patient helpers who are selected by patients who require their services, either in the hospital or after returning to their homes, are generally in the employ of the patient.

Subp. 10. **Service authorized or provided by agencies.** Any agency providing or authorizing the hiring of homeworkers or personal care attendants in the private home of an individual is the employer of those individuals performing the services and the services are not considered domestic if the recipient would not receive the care unless provided or funded for by the agency. It is immaterial whether the agency pays the homemaker or attendant directly or if the agency provides the funds to the recipient.

Statutory Authority: *MS s 268.021*

3315.3500 LOCATION OF DOMESTIC SERVICE.

“Domestic service” is service which is performed only in a private home of the employer, local college club, or local chapter of a college fraternity or sorority.

A local college club or local chapter of a college fraternity or sorority does not include an alumni club or chapter or university faculty club.

Statutory Authority: *MS s 268.021*

RECORDS, REPORTS, AND PAYMENTS

3315.3600 SCOPE.

Parts 3315.3600 to 3315.4100 clarify an employing unit’s duty with regard to records, reports, and payments as required under Minnesota Statutes, sections 268.06, subdivision 1; 268.11, subdivisions 2 and 3; and 268.12, subdivision 8.

Statutory Authority: *MS s 268.021*

3315.3700 NOTIFICATION.

Subpart 1. **Establishment of new business or change in existing business.** Each employing unit shall notify the department within 30 days of a change in legal entity, or of the start, transfer, sale, acquisition, or termination of a business, in whole or in part, insofar as the transaction results in the creation of a new or different employing unit or affects the establishment of employer accounts, the assignment of rates, or the transfer of experience records as provided in Minnesota Statutes, section 268.06. If the information as submitted is incomplete, subsequent requests for additional information required in determining liability, modifying an existing account, and assigning or transferring of experience rates must be completed, signed, and returned to the department in accordance with the instructions on the form or accompanying correspondence.

Subp. 2. **Employer death.** The executor, administrator, or other legal representative of a deceased employer shall be responsible for notifying the department of the employer’s death as soon as possible.

Subp. 3. **Bankruptcy.** In the case of bankruptcy or receivership proceedings, or any proceedings for the relief of a debtor who is an employer, the trustee in bankruptcy, receiver, or person designated by order of the court as the one in control of the assets of the debtor shall promptly file notice of the proceedings with the department.

Statutory Authority: *MS s 268.021*

3315.3800 RECORDS.

Each employing unit shall establish, maintain, and preserve records with respect to individuals performing personal services for it for a period of not less than five years after the calendar year in which the remuneration for the services was paid or payable. The records shall show for each individual the following:

- A. name;
- B. social security number;
- C. days in which the individual performed personal services;
- D. location where services were performed;
- E. wages paid and wages due but not paid for personal services, showing separately:
 - (1) money wages, excluding special payments;
 - (2) wages paid and wages due but not paid, in any medium other than money, excluding special payments;
 - (3) special payments such as bonuses, gifts, and prizes, showing separately money payments, other special payments, and the character of the payments;
 - (4) days for which sick pay was paid; and
 - (5) tips and gratuities paid to an employee by a customer and accounted for by the employee to the employer as defined in part 3315.0300, subparts 1 and 2;
- F. rate and base unit of pay;
- G. amounts paid as allowances or reimbursement for travel or other activity pertaining to the furtherance of the employing unit's business which were not included as wages. The account shall show each item of expense incurred during each pay period or calendar month;
- H. the date of separation and the reason, in detail, for the termination;
- I. the complete resident address of the employee; and
- J. for each pay period:
 - (1) the beginning and ending dates of the period;
 - (2) the total amount of wages paid and wages due but not paid for personal services performed; and
 - (3) the date of payment.

Statutory Authority: *MS s 268.021*

3315.3900 RECORDS, INSTATE AND OUTSTATE.

For services performed within and without Minnesota the records required by part 3315.3800 shall include:

- A. the city or county and state in which the employing unit maintains a base of operations, as defined in part 3315.1800, subpart 2, used by the individual;
- B. the city or county and state from which the services are directed and controlled, if the employing unit does not have a base of operations in the states in which an individual performs services; and
- C. a list of the states in which the individual performs other than temporary or incidental services and the dates services were performed at each location.

Statutory Authority: *MS s 268.021*

3315.4000 RECORDS, COVERED AND UNCOVERED EMPLOYMENT.

For services performed in both employment and excluded employment within a pay period the records required by part 3315.3800 shall include the hours spent performing services in employment and the hours spent performing excluded services.

Statutory Authority: *MS s 268.021*

3315.4100 FILING REPORTS.

An employer's tax report must be filed on a form prescribed by the department, or a reasonable facsimile thereof, not later than the due date for payment of quarterly contributions. Failure to receive forms from the department shall not constitute a valid reason for not filing reports on or before the due date thereof or for not paying any contribution due. Consolidated reports of corporations having common ownership shall be recognized or permitted only if expressly allowed under parts 3315.4200 to 3315.6000. If the report first submitted is erroneous, the employer shall promptly submit the corrected information on forms prescribed by the department and make any additional payment due.

Statutory Authority: *MS s 268.021*

CONSOLIDATED REPORTS**3315.4200 WHEN PERMITTED.**

Consolidated reports of parent and subsidiary corporations, or other employing units having common ownership, shall be recognized or permitted only in the case of two or more related corporations:

A. who concurrently employ the same individuals, including officers, whose wages during the calendar quarter are paid by one of the related corporations as a common paymaster; and

B. whose application for a joint account has been approved by the commissioner or his delegated representative.

Statutory Authority: *MS s 268.021*

3315.4300 RELATED CORPORATIONS TESTS.

Subpart 1. Tests. For the purpose of parts 3315.4200 to 3315.6000 and Minnesota Statutes, section 268.06, subdivision 21, clause (2), corporations are related for an entire calendar quarter if they satisfy one of the following four tests of subparts 2 to 5, at any time during that calendar quarter.

Subp. 2. Test one. They are either:

A. members of a parent-subsidiary controlled group which is a group of two or more corporations connected through stock ownership with a common parent corporation if more than 50 percent of the total combined voting power or more than 50 percent of the total value of shares of all classes of stock of each corporation, except the common parent corporation, is owned by one or more of the corporations and the common parent corporation owns stock with more than 50 percent of the total combined voting power of at least one of the other corporations (there shall be excluded in computing the percentage of voting power or value, any treasury stock owned by the subsidiary corporation);

B. members of a brother-sister controlled group consisting of two or more corporations in each of which five or fewer of the same individuals, estates, or trusts own stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of all shares of all classifications of stock of each corporation, taking into account the stock ownership of each person only to the extent the stock ownership is identical with respect to each corporation;

C. members of a combined group, which is a group of three or more corporations each of which is a member of a parent-subsidiary or brother-sister controlled group and one of which is a common parent corporation included in a parent-subsidiary controlled group and is included in a brother-sister controlled group; or

D. life insurance companies subject to income tax under section 802 of the Internal Revenue Code and the provisions of item A, B, or C are met and all other members of the controlled group are subject to section 802 of the Internal Revenue Code.

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Subp. 3. **Test two.** They are a corporation that does not issue stock and 50 percent or more of the board of directors, or other governing body, of each of the corporations are the same, or the same holders possess 50 percent or more of the voting power to elect directors to each corporation.

Subp. 4. **Test three.** Fifty percent or more of one corporation's officers are concurrently officers of the other corporation.

Subp. 5. **Test four.** Thirty percent or more of one corporation's employees are concurrently employees of the other corporation.

Statutory Authority: *MS s 268.021*

3315.4400 STOCK DEFINED.

For the purpose of parts 3315.4200 to 3315.6000 "stock" does not include:

- A. nonvoting stock which is limited and preferred as to dividends;
- B. treasury stock; or
- C. stock that is treated as excluded stock.

Statutory Authority: *MS s 268.021*

3315.4500 EXCLUDED STOCK, PARENT-SUBSIDIARY.

"Excluded stock" for a parent-subsidiary controlled group means:

A. stock in a subsidiary held in trust that is part of an employee's deferred compensation plan;

B. stock in a subsidiary owned by an individual who is a principal stockholder or an officer of the parent corporation. A "principal stockholder" is one that owns five percent or more of the voting power or five percent or more of the value of all stock of the parent corporation; or

C. stock in a subsidiary corporation owned by an employee of the subsidiary corporation but only if the parent or subsidiary corporation restricts or limits the employee's right to dispose of the stock.

Statutory Authority: *MS s 268.021*

3315.4600 EXCLUDED STOCK, BROTHER-SISTER GROUP.

"Excluded stock" for a brother-sister controlled group means:

A. stock in a member corporation held by an employees' trust if the trust is for the benefit of the employees;

B. stock in a member corporation owned by an employee of the corporation but only if substantial limits or restrictions are imposed on the employee's right to dispose of the stock (a bona fide reciprocal stock repurchase arrangement will not be considered as one that restricts or limits the employee's right to dispose of the stock); or

C. stock in a member corporation that is held by a nonprofit educational or charitable organization.

Statutory Authority: *MS s 268.021*

3315.4700 LIMITS ON GROUPS.

A corporation may be treated as a component member of only one controlled group.

Statutory Authority: *MS s 268.021*

3315.4800 CONCURRENT EMPLOYMENT.

"Concurrent employment" as used in Minnesota Statutes, section 268.06, subdivision 21 and parts 3315.4200 to 3315.6000 means the simultaneous existence of an employment relationship between an individual and two or more related corporations, as defined in Minnesota Statutes, section 268.04, subdivision 12.

An employment relationship shall require the performance of services by the employee for the employing corporation in exchange for wages which, if not for the provisions of Minnesota Statutes, section 268.06, subdivision 21, clause (2) and parts 3315.4200 to 3315.6000, would be reportable by the employing corporation.

The fact that a particular employee is on leave or otherwise temporarily inactive is immaterial in the determination of concurrent employment. Employment is not concurrent with respect to one of the related corporations if there is no employment relationship with that corporation during periods when the employee is not performing services for that corporation.

An individual who does not perform substantial services in exchange for wages for a corporation is presumed not employed by that corporation.

Wages paid to an employee ceasing to be concurrent for services rendered while the employee was in concurrent employment is reportable by the common paymaster. If the employment relationship is nonexistent during a quarter, that employee may not be counted towards the 30 percent test set forth in part 3315.4300, subpart 5.

Statutory Authority: *MS s 268.021*

3315.4900 CASH PAYMENTS ONLY.

Parts 3315.4200 to 3315.6000 apply only to wages disbursed in money, check, or similar instrument by one of the related corporations or its agent, and excludes the value of noncash compensation such as room and board, received by the common employee from a member corporation other than the common paymaster.

Statutory Authority: *MS s 268.021*

3315.5000 COMMON PAYMASTER.

A "common paymaster" of related corporations is any related member that disburses wages to employees of two or more of the related corporations on their behalf and that is responsible for keeping books and records for the payroll with respect to those employees.

The common paymaster is not required to disburse wages to all employees of two or more related corporations, but parts 3315.4200 to 3315.6000 do not apply to any wages that are not disbursed through a common paymaster.

Although a corporation may be treated as a component member of only one controlled group, the related corporations may designate more than one common paymaster but only one common paymaster may be designated for each class of employee.

Statutory Authority: *MS s 268.021*

3315.5100 JOINT ACCOUNT.

A joint account application shall be on forms prescribed by the department. A joint account shall be maintained as a separate unit of the employer account of the common paymaster until that account is terminated or notification is received regarding a change of the common paymaster. A joint account cannot be made retroactive prior to January 1 of the year preceding the year in which the application is received.

Statutory Authority: *MS s 268.021*

3315.5200 JOINT AND SEVERAL LIABILITY.

The common paymaster has the primary responsibility for the remittance of any contributions, penalties, and interest due on wages it disburses as the common paymaster but each related corporation using the common paymaster is jointly and severally liable for its proportionate share of any unpaid contributions, penalties, and interest.

Statutory Authority: *MS s 268.021*

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3315.5300 COMMON PAYMASTER RESPONSIBILITIES.

The common paymaster has the sole responsibility for filing contribution reports, wage and separation information, and protests and appeals pertaining to concurrent employees and to establish effective communications between the related corporations to ensure timely response on all matters affecting claims for unemployment benefits.

Statutory Authority: MS s 268.021

3315.5400 Reports.

Each related corporation which is the employer of an individual will be responsible for reporting the individual's wages and remitting the appropriate contributions for calendar quarters where the related group or concurrent employment conditions are not met, regardless of which corporation disburses the wages.

Statutory Authority: MS s 268.021

3315.5500 WORK OTHER THAN FOR COMMON PAYMASTER.

If an employee works for a related corporation other than the common paymaster prior or subsequent to the effective period of the agreement, the wages earned and reportable by the employing corporation shall not be combined with the wages reportable by the common paymaster in determining the maximum taxable wage described in Minnesota Statutes, section 268.04, subdivision 25.

Statutory Authority: MS s 268.021

3315.5600 NONRELATED OR NONCURRENT.

Where related group or concurrent employment conditions are not met, each employing corporation of an individual shall be responsible for submitting wage and separation information, protests, and appeals pertaining to any claim for unemployment benefits of that individual.

Statutory Authority: MS s 268.021

3315.5700 WAGES, WAGE CREDITS, AND EXPERIENCE RATE FACTORS OF A JOINT ACCOUNT.

All wages reportable and benefits charged under the joint account shall remain with that account for contribution, benefit eligibility, and experience rating purposes.

Statutory Authority: MS s 268.021

3315.5800 RELATION CESSATION.

If any corporation ceases to be related, the common paymaster shall notify the department within 30 days of the end of the calendar quarter in which the cessation occurs.

Statutory Authority: MS s 268.021

3315.5900 TERMINATION OF AGREEMENT.

The commissioner may immediately terminate the agreement if it is found that consolidated reporting is not in compliance with parts 3315.4200 to 3315.6000, or it is determined that the approved related group changed its common paymaster for the purpose of attaining more favorable experience rates.

Statutory Authority: MS s 268.021

3315.6000 WRITTEN PROTEST.

If an application to report under the provisions of Minnesota Statutes, section 268.06, subdivision 21, clause (2) and parts 3315.4200 to 3315.6000 is denied, or an existing agreement is terminated at the discretion of the commissioner, the denial or termination shall be final unless a written protest is filed with

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the commissioner as set forth in Minnesota Statutes, section 268.06, subdivision 20.

Statutory Authority: *MS s 268.021*

3315.6100 PAYMENTS OF INTEREST.

Subpart 1. Scope. This part establishes the conditions upon which interest on contributions due may be waived as provided for in Minnesota Statutes, section 268.16, subdivision 1.

Subp. 2. Waiver. The commissioner may waive all or part of the interest charges on contributions that are not paid by the due date if: the late payment was caused by department error or misinformation; or the late payment was the result of unreasonable delay not attributable to the employer.

Subp. 3. Application. Each application for waiver of interest under this part must be made in writing by the employer or his authorized representative, except that the commissioner may on his own motion waive interest if in the best interest of the state of Minnesota.

Statutory Authority: *MS s 268.021*

3315.6200 CONTRIBUTION RATES.

Subpart 1. Notice of rate. Any employer determined liable by the department prior to January 1 shall be assigned a contribution rate pursuant to Minnesota Statutes, section 268.06 which shall be mailed on or before March 15 of the year effective.

Subp. 2. Time limit on voluntary contributions. In no event shall a voluntary contribution paid by an employer pursuant to Minnesota Statutes, section 268.06, subdivision 24 after the expiration of the first 120 days for the period the rate is effective be used in the computation of a new experience ratio.

Statutory Authority: *MS s 268.021*