

## MANPOWER SERVICES

## CHAPTER 268. DEPARTMENT OF EMPLOYMENT SERVICES

Sec.		Sec.	
268.04	Definitions.	268.12	Creation.
268.06	Employers, contributions.	268.15	Unemployment compensation fund.
268.07	Benefits payable.	268.16	Collection of contributions.
268.08	Persons eligible to receive benefits.	268.24	Citation, employment services law.
268.09	Disqualified from benefits.		

## 268.04 Definitions

[For text of subds. 1 to 9, see M.S.1971]

**Subd. 10. Employer.** "Employer" means: (1) Any employing unit which for some portion of a day but not necessarily simultaneously, in each of 20 different weeks, whether or not such weeks are or were consecutive, within the year 1936 has or had in employment eight or more individuals (irrespective of whether the same individuals are or were employed in each such day) and, for any calendar year subsequent to 1936, an employing unit which, for some portion of a day, in each of 20 different weeks, whether or not such weeks are or were consecutive, and whether or not all of such weeks of employment are or were within the state within either the current or preceding calendar year, has or had in employment one or more individuals (irrespective of whether the same individual or individuals were employed in each such day) within the corporate limits of a city, village, or borough of 10,000 population or more, as determined by the most recent United States census and, for any calendar year subsequent to 1959, an employing unit which, for some portion of a day, in each of 20 different weeks, whether or not such weeks are or were consecutive, and whether or not all of such weeks of employment are or were within the state within either the current or preceding calendar year, has or had in employment four or more individuals (irrespective of whether the same individual or individuals were employed in each such day) outside the corporate limits of a city, village, or borough of 10,000 population or more. For the purposes of this law, the 1960 United States census shall be applied in determining liability until December 31, 1971. For any calendar year subsequent to December 31, 1971, an employing unit which, for some portion of a day, in each of 20 different weeks, whether or not such weeks are or were consecutive, and whether or not all of such weeks of employment are or were within the state within either the current or preceding calendar year, has or had in employment one or more individuals (irrespective of whether the same individual or individuals were employed in each such day) or in any calendar quarter in either the current or preceding calendar year paid \$1,500 or more for services in employment;

(2) Any employing unit (whether or not an employing unit at the time of acquisition) which acquired the organization, trade, or business, or substantially all of the assets thereof, of another employing unit which at the time of such acquisition was an employer subject to this law; or which acquired a part of the organization, trade, or business of another employing unit which at the time of such acquisition was an employer subject to this law;

(3) For purposes of clause (1), employment shall include service which would constitute employment but for the fact that such service is deemed to be performed entirely within another state pursuant to an election under an arrangement entered into (in accordance with section 268.13, subdivision 1) by the commissioner and an agency charged with the administration of any other state or federal unemployment compensation law;

(4) For purposes of clause (1), if any week includes both December 31 and January 1, the days of that week up to January 1 shall be deemed one calendar week and the days beginning January 1 another such week;

268.04 DEPARTMENT OF EMPLOYMENT SERVICES

(5) Any employing unit which acquired the organization, trade, or business, or substantially all the assets thereof, of another employing unit, and which, if treated as a single unit with such other employing unit, would be an employer under clause (1);

(6) Any employing unit which, together with one or more other employing units, is owned or controlled (by legally enforceable means or otherwise) directly or indirectly by the same interests, or which owns or controls one or more other employing units (by legally enforceable means or otherwise) and which, if treated as a single unit with such other employing units or interests or both, would be an employer under clause (1) this clause shall be construed so that the aggregate contributions paid by the employing units owned or controlled directly or indirectly by the same interests as to each employee shall not exceed that amount which equals the experience ratio of the employing unit which hires and controls the employee, or the experience ratio which the commissioner determines is applicable to the employee, multiplied by the aggregate wages paid to each such employee by said controlled employing units, as if a single employer;

(7) Any joint venture composed of one or more employers as otherwise defined herein;

(8) Any non-resident employing unit which employs within this state one or more employees for one or more weeks;

(9) Any employing unit for which service in employment, as defined in subdivision 12, clause (9), is performed after December 31, 1971;

(10) Any employing unit which, having become an employer under the preceding clauses, has not, under section 268.11, ceased to be an employer subject to these sections;

(11) For the effective period of its election pursuant to section 268.11, subdivision 3, any other employing unit which has elected to become subject to sections 268.03 to 268.24;

(12) Notwithstanding any inconsistent provisions of sections 268.03 to 268.24, any employing unit not an employer by reason of any other clause of this subdivision for which service is performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund or which, as a condition for the approval of this law for full tax credit against the tax imposed by the federal unemployment tax act, is required pursuant to such act, to be an "employer" under the law;

(13) Except as provided in clause (12), and notwithstanding any other provisions of sections 268.03 to 268.24, no employing unit shall be initially determined a subject employer on the basis of covered employment performed more than four years prior to the year in which such determination is made, unless the commissioner finds that the records of such employment experience were fraudulently concealed or withheld for the purpose of escaping liability under said sections;

(14) Any employing unit for which service in employment, as defined in subdivision 12, clause (7), is performed.

[1973 c 431 s 1]

[For text of subd. 11, see M.S.1971]

**Subd. 12. Employment.** "Employment" means: (1) Subject to the other provisions of this subdivision "employment" means service performed prior to January 1, 1945, which was employment as defined in this section prior to such date, and any service performed after December 31, 1944, including service in interstate commerce, by an individual who is a servant under the law of master and servant or who performs services for any employing unit, unless such services are performed by an independent contractor. Any service performed, including service in interstate commerce, by

(a) any officer of a corporation; or

(b) any individual other than an individual who is an employee under clause (a) who performs services for remuneration for any person as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services, for his principal, or as a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a fulltime basis in the solicitation on behalf of, and the transmission to, his principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations;

Provided, that for purposes of clause (1)(b), the term "employment" shall include services described above performed after December 31, 1971, only if the contract of service contemplates that substantially all of the services are to be performed personally by such individual, the individual does not have a substantial investment in facilities used in connection with the performance of the services (other than in facilities for transportation), and the services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

(2) The term "employment" shall include an individual's entire service, performed within or both within and without this state if (a) the service is localized in this state; or (b) the service is not localized in any state but some of the service is performed in this state and (1) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; (2) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(3) Service shall be deemed to be localized within a state if (a) the service is performed entirely within such state; or (b) the service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(4) After December 31, 1971, the term "employment" shall include an individual's service wherever performed within the United States, the Virgin Islands or Canada, if

(a) Such service is not covered under the unemployment compensation law of any other state, the Virgin Islands or Canada, and

(b) The place from which the service is directed or controlled is in this state.

(5)(a) Service covered by an election pursuant to section 268.11, subdivision 3; and

(b) Service covered by an arrangement pursuant to section 268.13 between the commissioner and the agency charged with the administration of any other state or federal employment security law, pursuant to which all service performed by an individual for an employing unit is deemed to be performed entirely within this state, shall be deemed to be employment if the commissioner has approved an election of the employing unit for which such service is performed, pursuant to which the entire service of such individual during the period covered by such election is deemed to be employment.

(6) Notwithstanding any inconsistent provisions of sections 268.03 to 268.24, the term "employment" shall include any services which are performed by an individual with respect to which an employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund or which as a condition for full tax credit against the tax imposed by the federal unemployment tax act is required to be covered under this law.

(7) Service performed after July 1, 1957, by an individual for the state of Minnesota or any instrumentality which is wholly owned by the state of Min-

268.04 DEPARTMENT OF EMPLOYMENT SERVICES

nesota or in the employ of this state and one or more other states or their instrumentalities.

(8) Service performed after January 1, 1974, by an individual for any political subdivision of the state of Minnesota or instrumentality thereof.

(a) The provisions of section 268.08, subdivision 5, shall apply to service covered by this section.

(b) The amounts required to be paid in lieu of contributions by any political subdivision shall be billed and payment made as provided in section 268.06, subdivision 28, clause (2), with respect to similar payments by nonprofit organizations.

(9) Service performed after December 31, 1971, by an individual in the employ of a religious, charitable, educational or other organization but only if the following conditions are met:

(a) the service is excluded from "employment" as defined in the federal unemployment tax act solely by reason of section 3306(c)(8) of that act; and

(b) the organization had one or more individuals in employment for some portion of a day in each of 20 different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time.

(10) For the purposes of clauses (7), (8), and (9), the term "employment" does not apply to service performed

(a) in the employ of a church or convention or association of churches, or an organization which is operated exclusively for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches; or

(b) by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or

(c) in the employ of a school which is not an institution of higher education or not a public school as defined in section 120.05; or

(d) 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 providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work; or

(e) 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, by an individual receiving such work relief or work training; or

(f) for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution.

(11) The term "employment" shall include the service of an individual who is a citizen of the United States, performed outside the United States (except in Canada or the Virgin Islands), after December 31, 1971, in the employ of an American employer (other than service which is deemed "employment" under the provisions of clauses (2), (3), or (4) or the parallel provisions of another state's law) if:

(a) The employer's principal place of business in the United States is located in this state; or

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

(c) None of the criteria of (a) and (b) of this clause is met but the employer has elected coverage in this state, or the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.

(d) An "American employer," for the purposes of this subdivision, means a person who is 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;

(e) As used in this subdivision, the term "United States" includes the states, the District of Columbia, and the Commonwealth of Puerto Rico.

(12) Notwithstanding clause (1), all service performed after the effective date of this subdivision by an officer or member of the crew of an American vessel on or in connection with such vessel, if the operating office, from which the operations of such vessel operating on navigable waters within, or within and without, the United States are ordinarily and regularly supervised, managed, directed and controlled is within this state.

(13) The term "employment" shall not include:

(a) Agricultural labor. The term "agricultural labor" includes all services performed subsequent to December 31, 1939:

(1) On a farm, in the employ of any person, 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 wild-life;

(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 such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(3) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the agricultural marketing act, as amended (46 Stat. 1550, sec. 3; 12 U.S.C. 1141j) or in connection with the ginning of cotton, 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 such operator produced more than one half of the commodity with respect to which such service is performed, or in the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described herein, but only if such operators produced more than one half of the commodity with respect to which such service is performed; however, the provisions of this paragraph shall not be deemed to be applicable with respect to service 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 such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

As used herein, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

268.04 DEPARTMENT OF EMPLOYMENT SERVICES

Notwithstanding the provisions of clause (13)(a)(1), (2), (3), (4) and (5), services performed after January 1, 1974, for an employing unit which has four or more persons performing services in agricultural labor for some portion of a day in each of 20 different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time, shall not be excluded from the term "employment".

(b) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

(c) Casual labor not in the course of the employing unit's trade or business;

(d) Service performed on the navigable waters of the United States as to which this state is prohibited by the constitution and laws of the United States of America from requiring contributions of employers with respect to wages as provided in sections 268.03 to 268.24;

(e) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of 18 in the employ of his father or mother;

(f) Service performed in the employ of the United States government, or any instrumentality of the United States exempt under the constitution of the United States from the contributions imposed by sections 268.03 to 268.24, except that with respect to such service performed subsequent to December 31, 1939, and to the extent that the congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment compensation fund under a state unemployment compensation act; then, to the extent permitted by congress, and from and after the date as of which such permission becomes effective, all of the provisions of these sections shall be applicable to such instrumentalities and to services performed for such instrumentalities in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and services; provided, that if this state shall not be certified for any year by the United States department of labor under section 3304(c) of the federal internal revenue code, the payments required of such instrumentalities with respect to such year shall be refunded by the commissioner from the fund in the same manner and within the same period as is provided in section 268.16, subdivision 6, with respect to contributions erroneously collected;

(g) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress;

(h) (1) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) (other than an organization described in section 401(a)) or section 521 of the federal internal revenue code, if the remuneration for such service is less than \$50; or

(2) Service performed in the employ of a school, college, or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university; or

(3) Service performed by an individual under the age of 22 who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a fulltime program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this paragraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(i) Service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

(j) Service performed in the employ of an instrumentality wholly owned by a foreign government, if

(1) The service is of a character similar to that performed in foreign countries by employees of the United States government or of an instrumentality thereof; and

(2) The commissioner finds that the United States secretary of state has certified to the United States secretary of the treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and of instrumentalities thereof.

(k) Service covered by an arrangement between the commissioner and the agency charged with the administration of any other state or federal employment security law pursuant to which all services performed by an individual for an employing unit during the period covered by such employing unit's duly approved election, are deemed to be performed entirely within such agency's state;

(l) Service performed in the employ of a hospital, if such service is performed by a patient of the hospital, as defined in clause (16);

(m) Service performed subsequent to December 31, 1940, as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered and approved pursuant to state law; and service performed as an intern in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered and approved pursuant to state law;

(n) Service performed subsequent to December 31, 1940, by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission (the word "insurance" as used in this subdivision shall include an annuity and an optional annuity);

(o) Service performed by 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;

(p) Service performed by an individual for a person as a real estate salesman, if all such service performed by such individual for such person is performed for remuneration solely by way of commission;

(q) If the service performed subsequent to December 31, 1940, during one half or more of any pay period by an individual for the person employing him constitutes employment, all the service of such individual for such period shall be deemed to be employment; but if the service performed during more than one half of any such pay period by an individual for the person employing him does not constitute employment, then none of the service of such individual for such period shall be deemed to be employment. As used in this subdivision, the term "pay period" means a period (of not more than 31 consecutive days) for which a payment or remuneration is ordinarily made to the individual by the person employing him.

(14) Except when performed for an institution of higher education, as defined in clause (15), or a hospital, as defined in clause (16), the term "employment" as applied to services performed by an individual for the state of Minnesota or any instrumentality wholly owned by the state, except political subdivisions or instrumentalities thereof, shall not include the following:

(a) Service performed by elected public officials and unclassified employees appointed for a definite term, except after December 31, 1971, this exclusion

268.04 DEPARTMENT OF EMPLOYMENT SERVICES

shall not apply to service performed by unclassified employees in an instructional, research, or principal administrative capacity in an institution of higher education or a hospital;

(b) Service performed prior to January 1, 1972, by a faculty member in the employ of a university, college, school or any other institution of higher education which is supported wholly or substantially by public funds;

(c) Service performed by members of the Minnesota national guard when ordered to duty for military assignments;

(d) Service performed in the employ of the state natural resources department directly and solely in connection with emergency fire fighting, including but not limited to those persons temporarily employed for the purpose of detecting, locating, or suppressing forest fires.

(15) "Institution of higher education," for the purposes of this subdivision, means an educational institution which:

(a) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(b) Is legally authorized in this state to provide a program of education beyond high school;

(c) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for credit toward such a degree, a program of post-graduate or post-doctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(d) Is a public or other nonprofit institution.

(e) Notwithstanding any of the foregoing provisions of this clause, all colleges and universities in this state are institutions of higher education for purposes of this section.

(16) "Hospital" means an institution which has been licensed, certified or approved by the department of health as a hospital.

[1973 c 65 s 1; 1973 c 599 s 1; 1973 c 725 s 51]

[For text of subds. 13 to 30, see M.S.1971]

268.06 Employers, contributions

[For text of subds. 1 to 7, see M.S.1971]

**Subd. 8. Determination of contribution rates.** For the year 1974 and for each calendar year thereafter the commissioner shall determine the contribution rate of each employer by adding the experience ratio to the minimum rate. The minimum rate for all employers shall be nine tenths of one percent if the amount in the unemployment compensation fund is less than \$90,000,000 on June 30 of the preceding calendar year; or eight tenths of one percent if the fund is more than \$90,000,000 but less than \$110,000,000; or seven tenths of one percent if the fund is more than \$110,000,000 but less than \$130,000,000; or six tenths of one percent if the fund is more than \$130,000,000 but less than \$150,000,000; or five tenths of one percent if the fund is more than \$150,000,000 but less than \$170,000,000; or three tenths of one percent if the fund is more than \$170,000,000 but less than \$200,000,000; or one tenth of one percent if the fund is \$200,000,000 or more; provided that no employer shall have a contribution rate of more than five percent.

[1973 c 599 s 2]

[For text of subds. 9 to 21, see M.S.1971]

**Subd. 22. Employment experience record transfer.** For experience rating purposes, one or more employing units which is or are the subject of or parties to a change of ownership or any form of organization or reorganization of an employing enterprise including a change in legal identity or form shall be deemed to be a successor, and there shall be transferred to such successor



the employment experience record of all or any severable portion thereof of one or more such employing enterprises involved in such change of ownership, organization, or reorganization if the commissioner finds that there is a continuation of the employment activities of the predecessor employing unit or units and that the purpose of such change is not to avoid a contribution rate in excess of 2.7 percent, and such transfer would not be inequitable and would not tend to defeat the object and purpose of this law.

Provided that in no event shall a successor be assigned a rate of less than 2.7 percent until such time as all of the unpaid contributions of the predecessor have been paid. Credits due to a predecessor as a result of overpayment of contributions under this subdivision may be granted to the successor upon assignment thereof by such predecessor in such form and in accordance with such regulations as may be prescribed by the commissioner. Employment with a predecessor employer shall not be deemed to have been terminated if similar employment is offered by the successor employer and accepted by the employee.

[1973 c 599 s 3]

[For text of subds. 23 to 26, see M.S.1971]

**Subd. 27. Method of payment by political subdivision to fund.** Effective January 1, 1974, a political subdivision or instrumentality thereof is hereby authorized and directed to pay its obligations under subdivision 25 by moneys collected from taxes or other revenues. Each and every political subdivision authorized to levy taxes may include in its tax levy the amount necessary to pay such obligations. If the taxes authorized to be levied under this subdivision cause the total amount of taxes levied to exceed any limitation whatsoever upon the power of a political subdivision to levy taxes, such political subdivision may levy taxes in excess of the limitations in such amounts as is necessary to meet its obligation under subdivision 25. The expenditures authorized to be made under subdivision 25 shall not be included in computing the cost of government as defined in any home rule charter of any city affected thereby. The governing body of a municipality, for the purpose of meeting its liabilities under subdivision 25, in the event of a deficit, may issue its obligations payable in not more than two years, in an amount which may cause its indebtedness to exceed any statutory or charter limitations, without an election, and may levy taxes to pay therefor in the manner provided in section 475.61.

[1973 c 599 s 4]

[For text of subds. 28 and 29, see M.S.1971]

## 268.07 Benefits payable

[For text of subd. 1, see M.S.1971]

**Subd. 2. Weekly benefit amount and duration.** If the commissioner finds that an individual has earned 18, or more, credit weeks, and \$540 or more in wage credits, within the base period of employment in insured work with one or more employers, benefits shall be payable to such individual during his benefit year as follows:

(1) Weekly benefit amount shall be equal to 50 percent of the average weekly wage of such individual, computed to the nearest whole dollar, subject to a maximum of \$85 per week.

(2) An individual's maximum amount of regular benefits payable in a benefit year shall not exceed the lesser of (a) 26 times his weekly benefit amount or (b) 70 percent of the number of credit weeks earned by such an individual computed to the nearest whole week times his weekly benefit amount.

(3) Each eligible individual who is unemployed in any week shall be paid with respect to such week a benefit in an amount equal to his weekly benefit amount less that part of his earnings, payable to him with respect to such

268.07 DEPARTMENT OF EMPLOYMENT SERVICES

week which is in excess of \$25. Such benefit, if not a multiple of \$1, shall be computed to the next higher multiple of \$1.

(4) The provisions of this subdivision shall apply to claims for benefits which establish a benefit year subsequent to June 30, 1973.

[1973 c 599 s 5]

[For text of subds. 3 to 6, see M.S.1971]

268.08 Persons eligible to receive benefits

**Subdivision 1. Eligibility conditions.** An individual shall be eligible to receive benefits with respect to any week of unemployment only if the commissioner finds that:

(1) He has registered for work at and thereafter has continued to report to an employment office, or agent of such office, in accordance with such regulations as the commissioner may prescribe; except that the commissioner may by regulation waive or alter either or both of the requirements of this clause as to types of cases or situations with respect to which he finds that compliance with such requirements would be oppressive or would be inconsistent with the purposes of sections 268.03 to 268.24;

(2) He has made a claim for benefits in accordance with such regulations as the commissioner may prescribe; and

(3) He was able to work and was available for work, and was actively seeking work, provided that individual's weekly benefit amount shall be reduced one-fifth for each day such individual is unable to work or unavailable for work; provided further that benefits after December 31, 1971, shall not be denied by application of this clause to an individual who is in training with the approval of the commissioner;

(4) He has been unemployed for a waiting period of one week during which he is otherwise eligible for benefits under sections 268.03 to 268.24, provided, however, payment for the waiting week shall be made to such individual after he has qualified for and been paid benefits for four consecutive weeks of unemployment which period of unemployment is terminated because of such individual's return to full time employment. No individual shall be required to serve a waiting period of more than one week within the one year period subsequent to filing a valid claim and commencing with the week within which such valid claim was filed.

[1973 c 599 s 6]

[For text of subd. 2, see M.S.1971]

**Subd. 3. Not eligible.** An individual shall not be eligible to receive benefits for any week with respect to which he is receiving, has received, or has filed a claim for remuneration in an amount equal to or in excess of his weekly benefit amount in the form of

(1) termination, severance, or dismissal payment or wages in lieu of notice whether legally required or not; provided that if a termination, severance, or dismissal payment is made in a lump sum, the employer may allocate such lump sum payment over a period of weeks equal to the lump sum divided by the employee's regular pay while employed by such employer; provided any such payment shall be applied for a period of weeks immediately following the last day of work but not to exceed four weeks; or

(2) vacation allowance or holiday pay; or

(3) compensation for loss of wages under the workmen's compensation law of this state or any other state or under a similar law of the United States, or under other insurance or fund established and paid for by the employer; or

(4) a primary insurance benefit under Title II of the federal social security act, as amended, or similar old age benefits under any act of congress, or this state or any other state, or benefit payments from any fund, annuity, or insurance provided by or through the employer and to which the employer

## DEPARTMENT OF EMPLOYMENT SERVICES 268.09

contributes 50 percent or more of the total of the entire premiums or contributions to the fund.

Provided, that if such remuneration is less than the benefits which would otherwise be due under sections 268.03 to 268.24, he shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration; provided, further, that if the appropriate agency of such other state or the federal government finally determines that he is not entitled to such benefits, this provision shall not apply.

[1973 c 599 s 7]

[For text of subd. 4, see M.S.1971]

**Subd. 5. Services performed for state, municipalities or charitable corporations.** Effective January 1, 1974, benefits based on service in employment defined in section 268.04, subdivision 12, clauses (7), (8), and (9), shall be payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this law except that, (a) benefits based on service in an instructional, research, or principal administrative capacity in an institution of higher education (as defined in section 268.04, subdivision 12, clause (15)) shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or contracts to perform services in any such capacity for any institution or institutions of higher education for both such academic years or both such terms; (b) benefits based on wage credits earned in the employment of a public school shall not be paid to an individual during any period between two successive school years when the activity in which the wage credits were earned is not normally performed. This provision shall not apply to any individual who, prior to the end of a school year, has voluntarily left or has been indefinitely separated from such employment. For the purposes of this clause, school year means that period established by a school board in accordance with Minnesota Statutes 1971, Section 126.12.

[1973 c 599 s 8]

[For text of subd. 6, see M.S.1971]

## 268.09 Disqualified from benefits

**Subdivision 1. Disqualifying conditions.** An individual shall be disqualified for benefits:

(1) **Voluntary leaving or discharge for misconduct.** If such individual voluntarily and without good cause attributable to the employer discontinued his employment with such employer or was discharged for misconduct, not amounting to gross misconduct, connected with his work or for misconduct which interferes with and adversely affects his employment, if so found by the commissioner, for not less than five nor more than eight weeks of unemployment in addition to and following the waiting period, or was discharged for gross misconduct connected with his work or gross misconduct which interferes with and adversely affects his employment, if so found by the commissioner, for 12 weeks of unemployment in addition to and following the waiting period, which disqualification shall not be removed by subsequent employment, and provided further that the commissioner is empowered to impose a total disqualification for the benefit year and to cancel part or all of the wage credits from the last employer from whom he was discharged for gross misconduct connected with his work, and the maximum benefit amount payable to such individual shall be reduced as follows:

(a) by an amount equal to the weekly benefit amount times the number of weeks for which such individual was disqualified, when the separation occurs as a result of discharge for misconduct;

## 268.09 DEPARTMENT OF EMPLOYMENT SERVICES

(b) by an amount equal to two times the weekly benefit amount, when the separation occurs because of a voluntary separation as described in this clause;

(c) by an amount equal to 12 times his weekly benefit amount, when the separation occurs as a result of a discharge for gross misconduct.

For the purpose of this clause "gross misconduct" shall be defined as misconduct involving assault and battery, or an immoral act, or the malicious destruction of property or the theft of money or property of a value of \$50, or more.

This provision shall not apply to any individual who left his employment to accept work offering substantially better conditions of work or substantially higher wages or both, or whose separation from such employment was due to serious illness of such individual.

**(2) Separation to assume family obligations.** If such individual voluntarily leaves employment because of pregnancy without availing herself of maternity leave rights provided by law, provided that such disqualification shall be removed by subsequent employment in insured work for a period of not less than six weeks.

**(3) Limited or no charge of benefits.** Benefits paid subsequent to an individual's separation under any of the foregoing clauses or because of his failure, without good cause, to accept an offer of suitable re-employment, shall not be used as a factor in determining the future contribution rate of the employer from whose employment such individual separated or whose offer of re-employment he refused; provided that this clause shall not apply to an individual involuntarily separated from employment because of pregnancy.

**(4) Failure to apply for or accept suitable work.** If the commissioner finds that he has failed, without good cause, either to apply for available, suitable work when so directed by the employment office, or the commissioner or to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the commissioner, or to actively seek employment. Such disqualification shall continue for the week in which such refusal or failure occurred and for a period of seven weeks of unemployment immediately following such refusal or failure.

(a) In determining whether or not any work is suitable for an individual, the commissioner shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience, his length of unemployment and prospects of securing local work in his customary occupation, and the distance of the available work from his residence.

(b) Notwithstanding any other provisions of sections 268.03 to 268.24, no work shall be deemed suitable, and benefits shall not be denied thereunder to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(2) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(3) if as a condition of being employed the individual would be required to join a union or to resign from or refrain from joining any bona fide labor organization;

(4) if after December 31, 1971, such individual is in training with the approval of the commissioner.

**(5) Labor dispute.** If such individual has left or partially or totally lost his employment with an employer because of a strike or other labor dispute. Such disqualification shall prevail for each week during which such strike or other labor dispute is in progress at the establishment in which he is or was employed, except that such disqualification shall be for one week

## DEPARTMENT OF EMPLOYMENT SERVICES 268.16

following commencement of the strike or other labor dispute for any employee who is not participating in or directly interested in the labor dispute which caused such individual to leave or partially or totally lose such employment. Failure or refusal of an individual to accept and perform available and customary work in the establishment constitutes participation. For the purpose of this section the term "labor dispute" shall have the same definition as provided in the Minnesota labor relations act. Nothing in this subdivision shall be deemed to deny benefits to any employee:

- (a) who becomes unemployed because of a lockout,
- (b) who is dismissed during the period of negotiation in any labor dispute and prior to the commencement of a strike, or
- (c) unless he is unemployed because of a jurisdictional dispute between two or more unions.

Provided, however, that voluntary separation during the time that such strike or other labor dispute is in progress at such establishment shall not be deemed to terminate such individual's participation in or direct interest in such strike or other labor dispute for purposes of this subdivision.

Benefits paid to an employee who has left or partially or totally lost his employment because of a strike or other labor dispute shall not be charged to his employer's account unless the employer was a party to the particular strike or labor dispute.

**(6) Refusal of suitable re-employment.** If such individual has failed without good cause to accept suitable re-employment offered by a base period employer. Such disqualification shall prevail for the week in which the failure occurred and for a period of seven weeks of unemployment following such failure, provided such disqualification shall not apply if such individual is in training with the approval of the commissioner.

[1973 c 23 s 1; 1973 c 599 s 9]

[For text of subds. 2 to 4, see M.S.1971]

## 268.12 Creation

[For text of subd. 1, see M.S.1971]

**Subd. 1a. Change of name.** The name of the department of manpower services is changed to the department of employment services. The name of the commissioner of manpower services is changed to the commissioner of employment services.

[1973 c 254 s 1]

[For text of subds. 2 to 14, see M.S.1971]

## 268.15 Unemployment compensation fund

[For text of subds. 1 and 2, see M.S.1971]

**Subd. 3. Interest and penalties.** All moneys in the form of interest and penalties collected pursuant to section 268.16 shall be paid into the general fund.

[1973 c 720 s 73, subd. 1]

[For text of subd. 4, see M.S.1971]

## 268.16 Collection of contributions

**Subdivision 1. Interest on past due contributions.** If contributions are not paid on the date on which they are due and payable, as prescribed by the commissioner, the whole or part thereafter remaining unpaid shall bear interest at the rate of one percent per month from and after such date until the first day of the calendar month during which payment is made to the department of manpower services; provided, however, that during the first month of delinquency interest shall be computed on the basis of one-thirtieth of one percent per month for each and every day of such delinquency. After any

## 268.16 DEPARTMENT OF EMPLOYMENT SERVICES

contribution has become delinquent for a period of 12 months thereafter interest thereon shall be computed at the rate of six percent per annum. Contributions, if mailed, shall be deemed to have been paid on the date of mailing as indicated by the postmark on the cover thereof; provided, however, that after January 1, 1949, contributions received by mail postmarked on a day following the date on which the law requires such contributions to be paid shall be deemed to have been paid on the due date if there is substantial evidence by affidavit or otherwise reasonably tending to prove that said report or contribution was actually deposited in the United States mails properly addressed to the department with postage prepaid thereon on or before the due date.

[1973 c 720 s 73, subd. 2]

**Subd. 2. Reports; delinquencies; penalties.** (1) Any employer who knowingly fails to make and submit to the department of manpower services any report of wages paid by or due from him for insured work in the manner and at the time such report is required by regulations prescribed by the commissioner shall pay to the department of manpower services an amount equal to one percent of contributions accrued during the period for which such report is required, for each month from and after such date until such report is properly made and submitted to the department of manpower services. In no case shall the amount of the penalty imposed hereby be less than \$5 except that in cases where the contribution is less than \$10 and the commissioner finds that the employer does not habitually fail to report on time the penalty shall be \$1. Any employing unit which fails to make and submit to the commissioner any report, other than one of wages paid or payable for insured work, as and when required by the regulations of the commissioner, shall be subject to a penalty in the sum of \$10 payable to the department of manpower services. All such penalties shall be in addition to interest and any other penalties provided for by sections 268.03 to 268.24 and shall be collected by civil action as hereinafter provided.

(2) If any employing unit required by sections 268.03 to 268.24 to make and submit contribution reports shall fail to do so within the time prescribed by these sections or by regulations under the authority thereof, or shall make, wilfully or otherwise, an incorrect, false or fraudulent contribution report, he shall, on the written demand of the commissioner, make such contribution report, or corrected report, within ten days after the mailing of such written demand and at the same time pay the whole contribution, or additional contribution, due on the basis thereof. If such employer shall fail within that time to make such report, or corrected report, the commissioner shall make for him a report, or corrected report, from his own knowledge and from such information as he can obtain through testimony, or otherwise, and assess a contribution on the basis thereof, which contribution, plus penalties and interest which thereafter accrued (less any payments theretofore made) shall be paid within ten days after the commissioner has mailed to such employer a written notice of the amount thereof and demand for its payment. Any such contribution report or assessment made by the commissioner on account of the failure of the employer to make a report or corrected report shall be prima facie correct and valid, and the employer shall have the burden of establishing its incorrectness or invalidity in any action or proceeding in respect thereto. Whenever such delinquent employer shall file a report or corrected report, the commissioner may, if he finds it substantially correct, substitute it for the commissioner's report. If an employer has failed to submit any report of wages paid, or has filed an incorrect report, and the commissioner finds that such noncompliance with the terms of sections 268.03 to 268.24 was not wilful and that such employer was free from fraudulent intent, the commissioner shall limit the charge against such employer to the period of the year in which such condition has been found to exist and for the preceding calendar year.

[1973 c 720 s 73, subd. 3]

[For text of subds. 3 to 7, see M.S.1971]

**268.24 Citation, employment services law**

Sections 268.03 to 268.24 shall be known and may be cited as the Minnesota employment services law.

[1973 c 254 s 2]

**TAXATION****SUPERVISION****CHAPTER 270. DEPARTMENT OF TAXATION**

Sec.		STATE BOARD OF ASSESSORS
270.02	Department of revenue; commissioner of revenue.	Sec. 270.46 Training courses, establishment; other courses, regulation.
270.07	Additional powers.	270.47 Rules and regulations.
270.17	Qualification of assessors; reassessment, how made.	270.493 Certain townships option to continue existing system [New].
270.27	Due date on Saturday, Sunday or holiday.	

**270.02 Department of revenue; commissioner of revenue**

Subdivision 1. The name of the department of taxation is changed to the department of revenue. The name of the commissioner of taxation is changed to the commissioner of revenue. Subject to the provisions of Laws 1973, Chapter 582 and other applicable laws, the department of revenue with its commissioner and other officers shall continue to exercise all the powers and duties vested in, or imposed upon its commissioner as existing and constituted immediately prior to July 1, 1973.

**Subd. 2. Terms, bond.** The commissioner of revenue shall be appointed by the governor by and with the advice and consent of the senate for a four year term which shall coincide with the term of the governor until his successor is duly appointed and qualified. The commissioner, who shall be in unclassified service, shall be selected on the basis of ability and experience in the field of taxation and tax administration and without regard to political affiliations. The governor may remove the commissioner at any time for cause, after notice and hearing. In case of a vacancy, the governor may appoint a commissioner, who shall take office immediately and shall carry on the duties of the office until the next session of the legislature, when his appointment is submitted to the senate for approval. The commissioner shall give bond to the state in the sum of \$200,000. The person occupying the position of commissioner of taxation on July 1, 1973, shall be designated as commissioner of revenue, and his term of office shall coincide with the term of the office of governor.

**Subd. 3. Powers, organization, assistants.** Subject to the provisions of this chapter and other applicable laws the commissioner shall have power to organize the department with such divisions and other agencies as he deems necessary and to appoint two deputy commissioners, a department secretary, directors of divisions, and such other officers, employees, and agents as he may deem necessary to discharge the functions of the department, define the duties of such officers, employees, and agents, and delegate to them any of his powers or duties, subject to his control and under such conditions as he may prescribe. Appointments to exercise delegated power shall be by written order filed with the secretary of state.

**Subd. 4. Department seal.** The department of revenue shall have a seal engraved with the words, "State of Minnesota, Department of Revenue." Such seal may be used to authenticate the official acts of the commissioner or any other members of the department, except the tax court, but the failure