

MINNESOTA STATUTES 1977 SUPPLEMENT

260.311 JUVENILES

mit to the commissioner of corrections an estimate of its costs hereunder. Reimbursement shall be made on the basis of the estimate or actual expenditures incurred, whichever is less. Salary costs shall not be reimbursed unless county probation officers are paid salaries commensurate with the salaries paid to comparable positions in the classified service of the state civil service. The salary range to which each county probation officer is assigned shall be determined by the authority having power to appoint probation officers, and shall be based on the officer's length of service and performance. The appointing authority shall annually assign each county probation officer to a position on the salary scale commensurate with the officer's experience, tenure, and responsibilities. The judge shall file with the county auditor an order setting each county probation officer's salary. Time spent by a county probation officer as a court referee shall not qualify for reimbursement. Reimbursement shall be prorated if the appropriation is insufficient.

[For text of subds 6 and 7, see M.S.1976]

[1977 c 281 s 1-3; 1977 c 392 s 8]

CHAPTER 261. GENERAL PROVISIONS

Sec.
261.233 Repealed.

261.233 [Repealed, 1977 c 453 s 28]

CHAPTER 268. DEPARTMENT OF ECONOMIC SECURITY

Sec.		Sec.	
268.011	Creation. [New]	268.12	Creation.
268.012	Transfer of powers. [New]	268.14	Free employment offices.
268.013	Effect of transfers. [New]	268.18	Return of benefits; offenses.
268.014	Cooperation with other state agencies. [New]	268.31	Development of youth employment opportunities. [New]
268.04	Definitions.	268.32	Rate of pay. [New]
268.06	Employers contributions.	268.33	Eligibility for employment and placement. [New]
268.07	Benefits payable.	268.34	Employment contracts with governmental subdivisions and nonprofit organizations. [New]
268.071	Extended benefits.	268.35	Allocation of funds. [New]
268.08	Persons eligible to receive benefits.	268.36	Report to the governor and the legislature. [New]
268.09	Unemployment compensation; disqualified from benefits.		
268.10	Determination of claims for benefits; appeals.		

268.011 Creation.

Subdivision 1. There is created the department of economic security with broad responsibility for income and employment policies, and for linking its benefits payments and job training and placement programs with veterans programs, worker's compensation, vocational and post-secondary training, federal income insurance programs, and economic development programs. The department shall be supervised and controlled by the commissioner of economic security, who shall be appointed by the governor with the advice and consent of the senate. The commissioner shall serve at the pleasure of the governor.

Subd. 2. The commissioner may establish six positions in the unclassified service at the deputy, assistant commissioner, or assistant to the commissioner levels. He may appoint and define the duties of other subordinate officers and employees as he deems necessary to discharge the functions of his department. The commissioner may delegate, in written orders filed with the secretary of state, any powers or duties subject to his control to officers and employees in the department.

[1977 c 430 s 1]

268.012 Transfer of powers.

Subdivision 1. Department of employment services. All powers, duties, and functions heretofore vested in or imposed on the commissioner of employment services by this chapter, or any other law relating to the duties and powers of the

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commissioner of employment services are transferred to, vested in, and imposed upon the commissioner of economic security. The position of commissioner of employment services and the department of employment services as heretofore constituted are abolished.

Subd. 2. **Department of vocational rehabilitation.** All powers, duties, and functions heretofore vested in or imposed on the commissioner of vocational rehabilitation by chapter 129A, or any other law relating to the duties and powers of the commissioner of vocational rehabilitation are transferred to, vested in, and imposed on the commissioner of economic security. The commissioner of vocational rehabilitation and the department of vocational rehabilitation as heretofore constituted are abolished.

Subd. 3. **Executive council; powers transferred.** All the powers and duties now vested in or imposed upon the commissioner of public welfare, or any other agency which may have succeeded to its authority, relating to the administration and distribution of direct relief to the indigent or destitute, including war veterans and their families and dependents, are hereby transferred to, vested in, and imposed upon the commissioner of economic security.

[1977 c 430 s 2]

NOTE: For the effective date of this section see Laws 1977, Chapter 430, Section 28, Subdivision 2.

268.013 Effect of transfers.

Subdivision 1. The department of economic security shall be deemed a continuation of the former department or agency as to those matters within the jurisdiction of the former department or agency which are assigned or transferred to the department by Laws 1977, Chapter 430, with the same force and effect as though the functions, powers or duties of the agency or department had not been assigned or transferred, and shall not be held to constitute a new authority for the purpose of succession to all rights, powers, duties and obligations of the former department or agency, as constituted at the time of the assignment or transfer. All rules heretofore promulgated under authority of a power, duty or responsibility transferred by Laws 1977, Chapter 430 to the commissioner of economic security or to the department of economic security shall remain in full force and effect until modified or repealed.

Subd. 2. Any proceeding, court action, prosecution, or other business or matter which is pending on the effective date of this section and which was undertaken or commenced by a department or agency whose functions, powers or duties are transferred to the department of economic security by Laws 1977, Chapter 430, may be conducted and completed by the department of economic security in the same manner, under the same terms and conditions, and with the same effect as though it were undertaken or commenced and conducted or completed by the former department or agency prior to the transfer.

Subd. 3. Except as otherwise provided in Laws 1977, Chapter 430, the head of a department or agency whose functions, powers and duties are transferred to the department of economic security by Laws 1977, Chapter 430 shall transfer all contracts, books, maps, plans, papers, records, and property of every description within his jurisdiction or control to the commissioner of economic security.

Subd. 4. All unexpended funds appropriated to any department or agency for the purposes of any of its functions, powers, or duties which are transferred by Laws 1977, Chapter 430 to the department of economic security are hereby transferred to the department of economic security. When the functions, powers and duties that are affected by Laws 1977, Chapter 430 are the responsibility of the department of economic security and another department or agency, the commissioner of administration shall allocate any unexpended appropriation to the department or agency between the department of economic security and the other departments or agencies affected, as may be appropriate.

Subd. 5. Except as otherwise provided in Laws 1977, Chapter 430, all classified employees and their positions assigned by a department or agency to perform any of the functions, powers or duties which are transferred by Laws 1977, Chapter

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430 to the department of economic security, are transferred to the department of economic security. The positions of all employees who are employed in the unclassified civil service by a department or agency to perform any of the functions, powers or duties which are transferred by Laws 1977, Chapter 430 to the department of economic security, with the exception of the unclassified positions established pursuant to the provisions of sections 43.05, subdivision 2, clause (11), and 43.09, subdivision 2, clause (9), are abolished. Any employee in the unclassified civil service whose position is abolished by Laws 1977, Chapter 430 and who is not appointed to an unclassified position authorized by Laws 1977, Chapter 430 may be otherwise continued in the unclassified civil service in the department of economic security, but for a period not to exceed 12 months from the date on which the department commences operation. Such positions shall be authorized pursuant to the provisions of section 43.05, subdivision 2, clause (11). Nothing herein shall be construed as abrogating or modifying any rights now enjoyed by affected employees under terms of an agreement between an exclusive bargaining representative and the state or one of its appointing authorities.

Subd. 6. If the programs of the Federal Comprehensive Employment and Training Act, the Federal Economic Opportunity Act, and the Federal Community Services Act are transferred to the department of economic security, state employees involved in administration and implementation of these programs in the unclassified civil service of the state shall be transferred, except for the positions of executive director and deputy director of the programs, to the classified civil service of the state without competitive examination and shall be placed in the proper classification by the commissioner of personnel with such compensation as such classifications carry. Incumbents of positions placed in the classified civil service shall receive such status and length of service credit as would have accrued to them had they originally been appointed to the classified civil service; however, such length of service credit shall not include seniority under the provisions of a collective bargaining agreement negotiated pursuant to sections 179.61 to 179.77, until effective date of classified civil service. Annual leave and sick leave shall be transferred and accrued in accordance with the provisions of section 43.222.

[1977 c 430 s 3]

NOTE: For the effective date of this section, see Laws 1977, Chapter 430, Section 28, Subdivision 2.

268.014 Cooperation with other state agencies.

To effectively coordinate job training and placement services with future job needs of the state the commissioner shall maintain close liaison, coordination and cooperation with the department of economic development and any other state agency involved in employment issues affecting the state.

[1977 c 430 s 13]

NOTE: For the effective date of this section, see Laws 1977, Chapter 430, Section 28, Subdivision 2.

268.04 Definitions.

[For text of subd 1, see M.S.1976]

Subd. 2. "Base period" means the period of fifty-two calendar weeks immediately preceding the first day of an individual's benefit year. Provided, however, that if a claimant received weekly worker's compensation for temporary total disability under the provisions of chapter 176 or under a similar law of the United States for more than seven weeks within the base period, as heretofore defined, his base period shall be lengthened by the number of such weeks, but not to exceed 52 weeks, for which he received such payments; provided further, that no extended base period shall include wage credits upon which benefits were established and paid with respect to a prior valid claim.

[For text of subds 3 to 7, see M.S.1976]

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Subd. 8. "Commissioner" means the commissioner of economic security.

[For text of subd 9, see M.S.1976]

Subd. 10. "Employer" means: (1) Any 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, except as provided in clause (18) of this subdivision;

(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;

(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), except as provided in clause (18) of this subdivision;

(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, except as provided in clause (18) of this subdivision;

(10) Any employing unit which, having become an employer under the preceding clauses or clauses (15), (16) or (17) of this subdivision, 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, subdi-

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vision 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, except as provided in clause (18) of this subdivision;

(15) Any employing unit for which service in employment as defined in subdivision 12, clause (8) is performed, except as provided in clause (18) of this subdivision;

(16) Any employing unit for which agricultural labor as defined in subdivision 12, clause (13) is performed;

(17) Any employing unit for which domestic service in employment as defined in subdivision 12, clause (14) is performed after December 31, 1977;

(18) (a) In determining whether or not an employing unit for which domestic service and other than domestic service is performed is an employer under clauses (1), (6), (9), (14), (15) or (16) of this subdivision, the wages earned or the employment of an employee performing domestic service after December 31, 1977 shall not be taken into account.

(b) In determining whether or not an employing unit for which agricultural labor and other than agricultural labor is performed is an employer under clause (1), (9) or (17) of this subdivision, the wages earned or the employment of an employee performing service in agricultural labor after December 31, 1977 shall not be taken into account. If an employing unit is an employer of agricultural labor the determination of whether it is an "employer" shall be governed by clause (1) of this subdivision.

[For text of subd 11, see M.S.1976]

Subd. 12. "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.

The term "employment" shall include: Any service performed, including service in interstate commerce, by;

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(a) any officer of any 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,

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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 in the employ of the state of Minnesota or any instrumentality which is wholly owned by the state of Minnesota or in the employ of this state and one or more other states or an instrumentality of this state and one or more of its political subdivisions or an instrumentality of this state and another state or an instrumentality of this state and one or more political subdivisions of another state if such service is excluded from "employment" as defined by section 3306(c)(7) of the federal unemployment tax act and is not excluded from "employment" under clause (10) of this subdivision.

(8) Service performed after January 1, 1974, by an individual in the employ of any political subdivision of the state of Minnesota or instrumentality thereof or an instrumentality of two or more political subdivisions of this state or any instrumentality of a political subdivision of this state and another state or political subdivisions of another state if such service is excluded from "employment" as defined by section 3306(c)(7) of the federal unemployment tax act and is not excluded from "employment" under clause (10) of this subdivision.

(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 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 be-

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cause 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

(d) 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

(e) prior to January 1, 1978 for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution and after December 31, 1977 by an inmate of a custodial or penal institution; or

(f) prior to January 1, 1978 in the employ of a nonpublic school; after December 31, 1977 in the employ of governmental entities referred to in clauses (7) and (8) of this subdivision if such service is performed by an individual in the exercise of duties

(i) as an elected official,

(ii) as a member of a legislative body, or as a temporary employee of the state legislature or of a legislative commission, or a member of the judiciary,

(iii) as a member of the Minnesota national guard or air national guard,

(iv) as an employee serving only on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency,

(v) (a) in a position with the state of Minnesota which is a major nontenured policy making or advisory position in the unclassified service, or

(b) a policy making position with the state of Minnesota or a political subdivision the performance of the duties of which ordinarily does not require more than eight hours per week; or

(c) in a position with a political subdivision which is a major nontenured policy making or advisory position.

(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 and in the case of the Virgin Islands after December 31, 1971, and before January 1 of the year following the year in which the United States secretary of labor approves the Virgin Islands law for the first time) 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.

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(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, the Commonwealth of Puerto Rico, and the Virgin Islands.

(12) Notwithstanding clause (1), all service performed 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) Service performed after December 31, 1977 by an individual in agricultural labor as defined in clause (15)(a) of this subdivision when:

(a) Such service is performed for a person who:

(i) during any calendar quarter in either the current or the preceding calendar year paid wages of \$20,000 or more to individuals employed in agricultural labor, or

(ii) for some portion of a day in each of 20 different calendar weeks, whether or not such weeks were consecutive, in either the current or preceding calendar year employed in agricultural labor four or more individuals regardless of whether they were employed at the same time.

(b) For the purpose of this clause (13) any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of the crew leader:

(i) if the crew leader holds a valid certificate of registration under the farm labor contractor registration act of 1963, as amended; or substantially all of the members of his crew operate or maintain tractors, mechanized harvesting or crop dusting equipment, or any other mechanized equipment, which is provided by the crew leader; and

(ii) if the individual is not an employee of another person as determined by subclause (13)(a) of this subdivision.

(c) For the purpose of this clause (13) in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of the crew leader under subclause (13)(b):

(i) such other person and not the crew leader shall be treated as the employer of such individual; and

(ii) such other person shall be treated as having paid wages to such individual in an amount equal to the amount of wages paid to such individual by the crew leader (either on his own behalf or on behalf of such other person) for the service in agricultural labor performed for such other person.

* (d) For the purposes of this clause (13) the term "crew leader" means an individual who:

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(i) furnishes individuals to perform service in agricultural labor for any other person,

(ii) pays (either on his own behalf or on behalf of such other person) the individuals so furnished by him for the service in agricultural labor performed by them, and

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

(e) For the purposes of this clause (13) services performed by an officer of a family farm corporation shall be excluded from agricultural labor and employment unless said corporation is an employer as defined in section 3306(a)(2) of the federal unemployment tax act.

(14) The term "employment" shall include domestic service after December 31, 1977 in a private home, local college club, or local chapter of a college fraternity or sorority performed for a person who paid wages of \$1,000 or more after December 31, 1977 in the current calendar year or the preceding calendar year to individuals employed in domestic service in any calendar quarter.

"Domestic service" includes all service for an individual in the operation and maintenance of a private household, for a local college club, or local chapter of a college fraternity or sorority as distinguished from service as an employee in the pursuit of an employer's trade, occupation, profession, enterprise or vocation.

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

(a) Agricultural labor. Service performed by an individual in agricultural labor, except as provided in clause (13) of this subdivision. The term "agricultural labor" includes all services performed subsequent to December 31, 1939:

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

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a tornadic-like storm, 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

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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.

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.

Notwithstanding the provisions of clause (13), (15) (a) (1), (2), (3), (4) and (5), services performed after January 1, 1974, and prior to January 1, 1978 for an employing unit which has four or more persons, excluding the officers of the corporation if the employing unit is a family farm corporation, 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) Until January 1, 1978 domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in clause (14) of this subdivision;

(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;

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(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 (18);

(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);

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(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.

(r) Services performed for a state, other than the state of Minnesota, or an instrumentality wholly owned by such other state or political subdivision of such other state;

(16) Except when performed for an institution of higher education, as defined in clause (17), or a hospital, as defined in clause (18), the term "employment" as applied to services performed prior to January 1, 1978 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 and employees of the legislature or a legislative commission employed as temporary employees, except after December 31, 1971, this exclusion 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.

(17) "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

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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.

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

[For text of subds 13 to 21, see M.S.1976]

Subd. 22. "State" includes, in addition to the states of the United States of America, Puerto Rico, the District of Columbia and the Virgin Islands.

Subd. 23. "Unemployment". An individual shall be deemed "unemployed" in any week during which he performs no service and with respect to which no wages are payable to him, or in any week of less than full time work if the wages payable to him with respect to such week are less than his weekly benefit amount, provided that no permanent employee of the legislature or a legislative commission shall be deemed to be unemployed while on a leave of absence. Any individual unemployed as a result of a uniform vacation shutdown shall not be deemed to be voluntarily unemployed. The commissioner may, in his discretion, prescribe regulations relating to the payment of benefits to such unemployed individuals.

[For text of subd 24, see M.S.1976]

Subd. 25. "Wages" means all remuneration for services, including commissions and bonuses, and tips and gratuities paid to an employee by a customer of an employer and accounted for by the employee to the employer, and the cash value of all remuneration in any medium other than cash, except that such term shall not include:

(1) For the purpose of determining contributions payable under section 268.06, subdivision 2, that part of the remuneration which exceeds \$7,000 during the calendar year of 1977, \$7,500 during the calendar year of 1978 and \$8,000 during the calendar year of 1979 and all subsequent calendar years, paid to an individual by an employer with respect to covered employment in this state, or with respect to employment under the unemployment compensation law of any other state during any calendar year paid to such individual by such covered employer or his predecessor during such calendar year; provided, that if the term "wages" as contained in the federal unemployment tax act is amended to include remuneration in excess of the amount required to be paid hereunder to an individual by an employer under the federal act for any calendar year, wages for the purposes of sections 268.03 to 268.24 shall include remuneration paid in a calendar year up to an amount equal to the dollar limitation specified in the federal unemployment tax act. For the purposes of this clause, the term "employment" shall include service constituting employment under any employment security law of another state or of the federal government;

(2) The amount of any payment made to, or on behalf of, an employee under a plan or system established by an employer which makes provision for his employees generally or for a class or classes of his employees (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment), on account of (a) retirement or (b) sickness or accident disability or (c) medical and hospitalization expenses in connection with sickness or accident disability, or (d) death, provided the employee (i) has not the option to receive, in-

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stead of provision for such death benefit, any part of such payment, or if such death benefit is insured, any part of the premium (or contributions to premiums) paid by his employer and (ii) has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit, or to receive a cash consideration in lieu of such benefit either upon his withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of his employment with such employer;

(3) The payment by an employer (without deduction from the remuneration of the employee) (a) of the tax imposed upon an employee under section 3101 of the federal internal revenue code, or (b) of any payment required from an employee under a state unemployment compensation law;

(4) Any payments made to a former employee during the period of active military service in the armed forces of the United States by such employer, whether legally required or not;

(5) Any payment made to, or on behalf of, an employee or his beneficiary (a) from or to a trust described in section 401(a) of the federal internal revenue code which is exempt from tax under section 501(a) of such code at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as an employee and not as a beneficiary of the trust, or (b) under or to an annuity plan which, at the time of such payment is a plan described in section 403(a) of the federal internal revenue code, or (c) under or to a bond purchase plan which, at the time of such payment, is a qualified bond purchase plan described in section 405(a) of the federal internal revenue code.

[For text of subds 26 to 28, see M.S.1976]

Subd. 29. "Credit week" with respect to any claim for benefits which establishes a benefit year subsequent to July 2, 1977, is any week for which wages have been paid and wages are due and payable but not paid of \$50 or more by or from one or more employers to an employee for insured work.

[For text of subds 30 and 31, see M.S.1976]

Subd. 32. "Nonpublic school" means any school within the state, other than a public school, wherein a resident of Minnesota may legally fulfill the compulsory school attendance requirements of section 120.10, or any school (1) which operates on a nonprofit basis, (2) which admits only pre-kindergarten children, (3) which has as its primary purpose the education of its students as determined by the commissioner of public welfare pursuant to section 245.791, clause (15), and (4) which operates on a regular basis for at least eight months and no more than nine months a year.

[1977 c 4 s 1-3; 1977 c 297 s 1-5; 1977 c 430 s 24]

NOTE: Subdivisions 10, 12 and 32, as amended by Laws 1977, Chapter 297, Sections 1, 2 and 5, are effective January 1, 1978. Subdivision 22, as amended by Laws 1977, Chapter 297, Section 3, is effective the day following the approval of the secretary of labor, pursuant to section 3304(a) of the federal unemployment tax act, of an unemployment compensation law of the Virgin Islands. For the effective date of subdivision 8, as amended by Laws 1977, Chapter 430, Section 24, see Laws 1977, Chapter 430, Section 28, Subdivision 2.

268.06 Employers contributions.

Subdivision 1. **Payments.** (1) Contributions shall accrue and become payable by each employer for each calendar year in which he is subject to sections 268.03 to 268.24 with respect to wages (as defined in section 268.04, subdivision 25) for employment, except that contributions shall not be payable after December 31, 1974 upon public service wages. "Public service wages" are remuneration for ser-

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vices performed in a public service job to the extent that such remuneration is paid with funds provided under the comprehensive employment and training act of 1973 and to the extent that the unemployment compensation fund is reimbursed for benefits based upon said public service wages pursuant to section 221 of United States Public Law 94-444. Such contributions shall become due and be paid by each employer to the department of employment services for the fund in accordance with such regulations as the commissioner may prescribe, and shall not be deducted, in whole or in part, from the wages of individuals in such employer's employ. No rule of the commissioner shall be put in force which will permit the payment of such contributions at a time or under conditions which will not allow the employer to take credit for such contribution against the tax imposed by section 3301 of the Internal Revenue Code.

(2) In the payment of any contribution, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more in which case it shall be increased to one cent.

(3) When the contribution rate applied to an employer's taxable payroll for any given calendar quarter results in a computed contribution of less than \$1, the contribution shall be disregarded.

[For text of subds 2 to 4, see M.S.1976]

Subd. 5. Benefits charged as and when paid. Benefits paid to an individual pursuant to a valid claim filed subsequent to June 30, 1941, shall be charged against the account of his employer as and when paid, except that benefits paid to an individual who during his base period earned wages for part time employment with an employer who continues to give the employee part time employment substantially equal to the part time employment previously furnished such employee by such employer shall not be charged to such employer's account. The amount of benefits so chargeable against each base period employer's account shall bear the same ratio to the total benefits paid to an individual as the base period wage credits of the individual earned from such employer bear to the total amount of base period wage credits of the individual earned from all his base period employers.

In making computations under this provision, the amount of wage credits if not a multiple of \$1, shall be computed to the nearest multiple of \$1.

An employer's account shall not be charged with respect to benefits paid to any individual whose base period wage credits include wages for previously uncovered services as defined in section 268.07, subdivision 7 to the extent that the unemployment compensation fund is reimbursed for such benefits pursuant to section 121 of United States Public Law 94-566.

[For text of subd 6, see M.S.1976]

Subd. 8. Determination of contribution rates. For the year 1976 and for each calendar year thereafter the commissioner shall determine the contribution rate of each employer by adding the minimum rate to the experience ratio, except that if the ratio for the current calendar year exceeds the experience ratio for the preceding calendar year by more than one and one-half percentage points, the increase for the current year shall be limited to one and one-half percentage points. The minimum rate for all employers shall be one percent if the amount in the unemployment compensation fund is less than \$80,000,000 on June 30 of the preceding calendar year; or nine-tenths of one percent if the fund is more than \$80,000,000 but less than \$90,000,000; 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; pro-

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vided that no employer shall have a contribution rate of more than 7.5 percent.

For the purposes of this section the unemployment compensation fund shall not include any moneys advanced from the Federal Unemployment Account in the unemployment trust fund in accordance with Title XII of the Social Security Act, as amended.

[For text of subds 18 to 24, see M.S.1976]

Subd. 25. Payments to fund by state and political subdivisions in lieu of contributions. In lieu of contributions required of employers under this law, the state of Minnesota or its political subdivisions governed by this law shall pay into the unemployment compensation fund an amount equivalent to the amount of benefits paid and one-half, and as to weeks of unemployment beginning after January 1, 1979 all, of the extended benefits paid to individuals based on wages paid by the state of Minnesota or such political subdivisions. If benefits paid an individual are based on wages paid by both the state of Minnesota or such political subdivisions and one or more other employers, the amount payable by the state of Minnesota or such political subdivisions to the fund shall bear the same ratio to total benefits paid to the individual as the base-period wages paid to the individual by the state of Minnesota or such political subdivisions bear to the total amount of base-period wages paid to the individual by all his base-period employers. The amount of payment required under this subdivision shall be ascertained by the commissioner semi-annually.

[For text of subds 26 and 27, see M.S.1976]

Subd. 28. Payment to fund by nonprofit corporation and allocation of benefit costs by base period reimbursers. (1) Benefits paid to employees of nonprofit organizations shall be financed in accordance with the provisions of this subdivision. For the purpose of this subdivision, a nonprofit organization is an organization (or group of organizations) described in section 501(c) (3) of the United States internal revenue code which is exempt from income tax under section 501(a) of such code. Any nonprofit organization which, pursuant to section 268.04, subdivision 10, clause (9) is, or becomes, subject to this law on or after January 1, 1972, shall pay contributions under the provisions of section 268.06, subdivision 1, unless it elects, in accordance with this paragraph, to pay to the commissioner for the unemployment fund an amount equal to the amount of regular benefits and of one-half of the extended benefits paid, that is attributable to service in the employ of such nonprofit organization, to individuals for weeks of unemployment which begin during the effective period of such election.

(a) Any nonprofit organization which is, or becomes, subject to this law on January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than two calendar years beginning with January 1, 1972; provided it files with the commissioner a written notice of its election within the 30 day period immediately following such date.

(b) Any nonprofit organization which becomes subject to this law after January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than two calendar years beginning with the date on which such subjectivity begins by filing a written notice of its election with the commissioner not later than 30 days immediately following the date of the determination of such subjectivity.

(c) Any nonprofit organization which makes an election in accordance with clause (a) or clause (b) will continue to be liable for payments in lieu of contributions until it files with the commissioner a written notice terminating its election not later than 30 days prior to the beginning of the calendar year for which such termination shall first be effective.

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(d) Any nonprofit organization which has been paying contributions under this law for a period subsequent to January 1, 1972, may change to a reimbursable basis by filing with the commissioner not later than 30 days prior to the beginning of any calendar year a written notice of election to become liable for payments in lieu of contributions. Such election shall not be terminable by the organization for that and the next year.

(e) The commissioner may for good cause extend the period within which a notice of election, or a notice of termination, must be filed and may permit an election to be retroactive but not any earlier than with respect to benefits paid after December 31, 1971.

(f) The commissioner, in accordance with such regulations as he may prescribe, shall notify each nonprofit organization of any determination which he may make of its status as an employer and of the effective date of any election which it makes and of any termination of such election. Such determinations shall be final unless reviewed in accordance with the provisions of section 268.12, subdivision 13.

(2) Payments in lieu of contributions shall be made at the end of each calendar quarter, or at the end of any other period as determined by the commissioner. The commissioner shall bill each nonprofit organization (or group of such organizations) which has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid during such quarter or other prescribed period that is attributable to service in the employ of such organization.

(3) Past due payments of amounts in lieu of contributions shall be subject to the same interest charges and collection procedures that apply to past due contributions under section 268.16.

(4) If any nonprofit organization is delinquent in making payments in lieu of contributions as required under this subdivision, the commissioner may terminate such organization's election to make payments in lieu of contributions as of the beginning of the next taxable year, and such termination shall be effective for that and the following taxable year.

(5) Any non-profit organization which elects or has elected to make payments in lieu of contributions into the unemployment compensation fund as provided in this subdivision shall not be liable to make such payments with respect to benefits paid any individual whose base period wage credits include wages for previously uncovered services as defined in section 268.07, subdivision 7 to the extent that the unemployment compensation fund is reimbursed for such benefits pursuant to section 121 of United States Public Law 94-566.

[For text of subds 29 and 30, see M.S.1976]

Subd. 31. Election by state or political subdivision to be a contributing employer.

(1) Notwithstanding the provisions of section 268.06, subdivisions 25 and 26, after December 31, 1977 an employer as defined in section 268.04, subdivision 10, clauses (14) and (15) may:

(a) Elect to be a contributing employer subject to the provisions of section 268.06, subdivisions 1, 2, 3a, 4, 5, 6, 8, 18, 19, 20 and 24 and section 268.16 beginning with January 1, 1978 if it files with the commissioner a written notice of its election within 30 days immediately following January 1, 1978; or

(b) Elect for a subsequent calendar year, not having elected to be a contributing employer beginning with January 1, 1978, to be a contributing employer subject to the provisions of section 268.06, subdivisions 1, 2, 3a, 4, 5, 6, 8, 18, 19, 20 and

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24 and section 268.16 if it files with the commissioner a written notice of its election within 30 days immediately following the first day of the subsequent calendar year.

An election shall continue for a minimum period of two calendar years immediately following the effective date of the election and thereafter unless a written notice terminating the election is filed with the commissioner not later than 30 days prior to the beginning of the calendar year for which the termination shall first be effective.

(2) The provisions of section 268.06, subdivisions 25, 26, and 27 as to the method of payments to the unemployment compensation fund shall apply to all contributions paid by or due from employers electing to be contributing employers under clause (1) of this subdivision.

Subd. 32. **Noncharging benefits based on public service wages.** Notwithstanding any other provision of section 268.06, benefits paid for weeks of unemployment subsequent to January 1, 1976 based upon public service wages for services performed in a public service job to the extent that the wages are paid with funds provided under the comprehensive employment and training act of 1973, shall not be charged against the account of an employer under the provisions of section 268.06, subdivision 5 or section 268.06, subdivisions 25, 28, or 29 to the extent that the unemployment compensation fund is reimbursed for the benefits pursuant to section 221 of United States Public Law 94-444. An employer's account that has been charged with such benefits prior to the effective date of this act shall be relieved of such charges to the extent that the unemployment compensation fund is reimbursed for such benefits pursuant to section 221, United States Public Law 94-444.

[1977 c 4 s 4,5; 1977 c 297 s 6-11; 1977 c 455 s 82]

NOTE: Subdivisions 5, 25, 28 and 31 as amended by Laws 1977, Chapter 297, Sections 7 to 10 are effective January 1, 1978. Subdivision 5 as amended by Laws 1977, Chapter 4, Section 4, is effective July 2, 1977. Subdivision 25, as amended by Laws 1977, Chapter 455, Section 82, is effective August 1, 1977. Subdivision 8 is effective January 1, 1977.

268.07 Benefits payable.

[For text of subd 1, see M.S.1976]

Subd. 2. **Weekly benefit amount and duration.** If the commissioner finds that an individual has earned 15, or more, credit weeks, and \$750 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 60 percent of the first \$85, 40 percent of the next \$85 and 50 percent of the remainder of the average weekly wage of such individual, computed to the nearest whole dollar, subject to a maximum of 62 percent of the average weekly wage paid to individuals by employers subject to the provisions of sections 268.03 to 268.24 as to claims for benefits which establish a benefit year subsequent to June 30, 1977 and prior to July 1, 1978. The maximum weekly benefit amount of claims for benefits which establish a benefit year subsequent to June 30, 1978 and prior to July 1, 1979 shall be 64 percent of said average weekly wage. The maximum weekly benefit amount of claims for benefits which establish a benefit year subsequent to July 1, 1979 shall be 66 2/3 percent of said average weekly wage.

On or before June 30 of each year the commissioner shall determine the average weekly wage paid by employers subject to sections 268.03 to 268.24 in the following manner:

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(a) The sum of the total monthly employment reported for the previous calendar year shall be divided by 12 to determine the average monthly employment.

(b) The sum of the total wages reported for the previous calendar year shall be divided by the average monthly employment to determine the average annual wage.

(c) The average annual wage shall be divided by 52 to determine the average weekly wage.

The maximum weekly benefit amount as so determined computed to the nearest whole dollar shall apply to claims for benefits which establish a benefit year which begins subsequent to June 30 of each year.

(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, including holiday pay, payable to him with respect to such 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, 1975.

[For text of subd 3, see M.S.1976]

Subd. 4. **Qualifying wages as to previously uncovered services.** With respect to claims for benefits which establish a benefit year beginning on or after January 1, 1978, credit weeks shall include credit weeks earned during the base period in previously uncovered services. For the purposes of this subdivision, the term "previously uncovered services" means services:

(a) Which were not employment or defined in section 268.04, subdivision 12, and were not services covered pursuant to section 268.11, subdivision 3 at any time during the one year period ending December 31, 1975; and

(b) Which (1) is domestic service as defined in section 268.04, subdivision 12, clause (14), or (2) service by an employee of a nonpublic school as provided in section 268.04, subdivision 12, clause (10) (f), or (3) service performed for the state of Minnesota or any instrumentality wholly owned by the state which was excluded from employment by section 268.04, subdivision 12, clause (14), except to the extent that assistance under Title II of the emergency jobs and unemployment assistance act of 1974 was paid on the basis of such services.

[1977 c 4 s 6; 1977 c 297 s 12]

NOTE: Subdivision 4 is effective January 1, 1978.

268.071 Extended benefits.

Subdivision 1. **Definitions.** As used in this section, unless the context clearly requires otherwise:

(1) Extended benefit period. "Extended benefit period" means a period which

(a) Begins with the third week after whichever of the following weeks occurs first: A week for which there is a national "on" indicator, or a week for which there is a state "on" indicator; and

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(b) Ends with either of the following weeks, whichever occurs later: The third week after the first week for which there is both a national "off" indicator and a state "off" indicator; or the 13th consecutive week of such period;

Provided, that no extended benefit period may begin by reason of a state "on" indicator before the 14th week following the end of a prior extended benefit period which was in effect with respect to this state.

(2) National "on" indicator. There is a "national 'on' indicator" for a week if for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment (seasonally adjusted) for all states equaled or exceeded four and one-half percent. The rate of insured unemployment, for the purposes of this clause, shall be determined by the secretary of labor by reference to the average monthly covered employment for the first four of the most recent six calendar quarters ending before the close of the period.

(3) National "off" indicator. There is a "national 'off' indicator" for a week if for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment (seasonally adjusted) for all states was less than four and one-half percent. The rate of insured unemployment for the purposes of this clause, shall be determined by the secretary of labor by reference to the average monthly covered employment for the first four of the most recent six calendar quarters ending before the close of such period.

(4) State "on" indicator. There is a "state 'on' indicator" for this state for a week if the commissioner determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under this law

(a) equaled or exceeded 120 percent of the average of such rates for the corresponding 13 week period ending in each of the preceding two calendar years, and

(b) equaled or exceeded four percent.

With respect to benefits for weeks of unemployment beginning after March 30, 1977 the determination of whether there has been a state "on" or "off" indicator beginning any extended benefit period may be made as provided in clauses (a) and (b) above or a "state 'on' indicator" shall exist if the rate described in clause (b) equaled or exceeded five percent irrespective of whether the percentage requirement provided by clause (a) is met or exceeded.

(5) State "off" indicator. There is a "state 'off' indicator" for this state for a week if, for the period consisting of such week and the immediately preceding 12 weeks, the requirements for a "state 'on' indicator" under clause (4) of this subdivision are not satisfied.

(6) Rate of insured unemployment. "Rate of insured unemployment," for purposes of clauses (4) and (5), means the percentage derived by dividing the average weekly number of individuals filing claims in this state for weeks of unemployment with respect to the most recent 13 consecutive week period, as determined by the commissioner on the basis of his reports to the United States secretary of labor, by the average monthly employment covered under this law for the first four of the most recent six completed calendar quarters ending before the end of such 13 week period.

(7) Regular benefits. "Regular benefits" means benefits payable to an individual under this law or under any other state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) other than extended benefits and additional benefits.

(8) Extended benefits. "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) payable to an individual under the provisions of this section for weeks of unemployment in his eligibility period.

(9) Additional benefits. "Additional benefits" means benefits payable to exhaustees by reason of conditions of high unemployment or by reason of other special factors under the provisions of any state law.

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(10) Eligibility period. "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(11) Exhaustee. "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

(a) Has received, prior to such week, all of the regular benefits that were available to him under this law or any other state law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85) in his current benefit year that includes such week;

Provided, that, for the purposes of this paragraph, an individual shall be deemed to have received all of the regular benefits that were available to him although as a result of a pending appeal with respect to wage credits or credit weeks that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits; or

(b) His benefit year having expired prior to such week, has no, or insufficient, wages and/or employment on the basis of which he could establish a new benefit year that would include such week or having established a benefit year that includes such week, he is precluded from receiving regular compensation by reason of: (i) a state law provision which meets the requirements of section 3304 (a) (7) of the Internal Revenue Code of 1954, or (ii) a disqualification determination which cancelled wage credits or totally reduced his benefit rights, or (iii) benefits are not payable by reason of a seasonal limitation in a state unemployment insurance law; and

(c) Has no right to unemployment benefits or allowances, as the case may be, under the railroad unemployment insurance act, the trade expansion act of 1962, the automotive products act of 1965 and such other federal laws as are specified in regulations issued by the United States secretary of labor; and has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada or the Virgin Islands, prior to the day after the day on which the United States secretary of labor approves the Virgin Islands law; but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law he is considered an exhaustee.

(12) State law. "State law" means the unemployment insurance law of any state, approved by the United States secretary of labor under section 3304 of the internal revenue code of 1954.

[For text of subs 2 to 5, see M.S.1976]

Subd. 6. **Beginning and termination of extended benefit period.** (1) Whenever an extended benefit period is to become effective in this state (or in all states) as a result of a state or a national "on" indicator, or an extended benefit period is to be terminated in this state as a result of a state "off" indicator and/or state and national "off" indicators, the commissioner shall make an appropriate public announcement.

(2) Computations required by the provisions of subdivision 1, clause (6) shall be made by the commissioner, in accordance with regulations prescribed by the United States secretary of labor.

(3) Except as otherwise provided, benefits paid under this section shall not be charged to the employment experience record of an employer.

(4) With respect to an employer which has elected to be a contributing employer under the provisions of section 268.06, subdivision 31, all benefits paid under this section which are based upon services for such contributing employer shall be

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charged to such contributing employer's account as to weeks of unemployment beginning after January 1, 1979.

[For text of subd 7, see M.S.1976].

[1977 c 297 s 13,14]

NOTE: Subdivision 1 as amended by Laws 1977, Chapter 297, Section 13, is effective April 1, 1977. Subdivision 6, as amended by Laws 1977, Chapter 297, Section 14, is effective January 1, 1978.

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;

An individual shall be deemed unavailable for work with respect to any week which occurs in a period when his principal occupation is that of a student in attendance at, or on vacation from an established school, college or university unless a majority of the credit weeks earned in his base period were for services performed during weeks in which he was attending school.

(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 weeks of unemployment in a benefit year which period of unemployment is terminated because of such individual's return to 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.

[For text of subd 2, see M.S.1976]

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, except that vacation allowance paid with respect to periods following termination or indefinite separation from employment shall not be treated as deductible income; or

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(3) compensation for loss of wages under the worker'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) benefit payments from any fund, annuity, or insurance provided by or through the employer and to which the employer contributes 50 percent or more of the total of the entire premiums or contributions to the fund, except that if a claimant has established a valid claim based on employment subsequent to the effective date of an award, 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, shall not be deductible nor shall remuneration in the form of a pension received as a consequence of service in the armed forces of the United States up to an amount of \$700 monthly or its weekly equivalent effect the eligibility of an employee of the United States to receive benefits.

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.

Subd. 4. Social security amount deducted from benefits. Any claimant aged 62 or over who has not established a valid claim based on employment subsequent to the effective date of an award for 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 shall be required to state in writing at the time of the filing of his claim whether he intends to seek Title II social security benefits for any week during which he will receive unemployment benefits, and if he so intends there shall be withheld from his weekly unemployment benefits an amount sufficient to cover the weekly equivalent of his social security benefit. Any claimant disclaiming such intention but who nevertheless receives such social security benefits for weeks for which he previously received unemployment benefits shall be liable for repayment of such unemployment benefits and otherwise subject to the provisions of section 268.18.

Subd. 5. Services performed for state, municipalities or charitable corporations. Prior to January 1, 1978 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)) or all the employees of the Minnesota school for the deaf and the Minnesota braille and sight saving school 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 or private school, or a political subdivision for service with respect to a 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 unless the individual has obtained employment with the same or another public or private school to commence at the

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beginning of the next school year. For the purposes of this clause, school year means that period established by a school board in accordance with section 126.12.

NOTE: Subdivision 5 is repealed effective January 1, 1978, pursuant to Laws 1977, Chapter 297, Section 22.

Subd. 6. **Services performed for state, municipalities or charitable corporation.** Effective January 1, 1978 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 benefits payable on the basis of other service subject to this chapter; except that

(a) With respect to weeks of unemployment after December 31, 1977, benefits based upon service performed in an instructional, research, or principal administrative capacity for an institution of higher education or a public school, or a non-public school or the Minnesota school for the deaf or Minnesota braille and sight saving school, benefits shall not be paid based upon such services for any week of unemployment commencing during the period between two successive academic years or terms, or during a similar period between two regular but not successive terms, or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if such individual performs such services in the first of such academic years or terms and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any institution of higher education, public school, nonpublic school, or said state deaf and sight saving schools in the second of such academic years or terms, and

(b) With respect to service performed after December 31, 1977 in any capacity, other than those capacities described in clause (a) of this subdivision, for a public school or nonpublic school, or the Minnesota school for the deaf or Minnesota braille and sight saving school, and for service with a political subdivision with respect to a school, benefits shall not be paid on the basis of such services to any individual for any week which commences during a period between two successive academic years or term if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms, and

(c) With respect to any services described in clause (a) or (b), compensation payable on the basis of such services shall not be paid to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess.

Subd. 7. **Professional athletes.** Benefits shall not be paid to an individual on the basis of any service substantially all of which consist of participating in sports or athletic events or training or preparing to so participate for any week which commences during the period between two successive sport seasons (or similar periods) if such individual performed such service in the first of such seasons (or similar period) and there is a reasonable assurance that such individual will perform such service in the later of such seasons (or similar periods).

Subd. 8. **Illegal aliens.** (a) Benefits shall not be paid on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for the purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of the application of the provision of section 203(a)(7) or section 212(d)(5) of the Immigration and Nationality Act).

(b) Any data or information required of individuals applying for benefits to

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determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(c) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of his alien status shall be made except upon a preponderance of the evidence.

[1977 c 4 s 7; 1977 c 297 s 15-18]

NOTE: Subdivisions 6, 7 and 8 are effective January 1, 1978.

268.09 Unemployment compensation; disqualified from benefits.

Subdivision 1. **Disqualifying conditions.** An individual shall be disqualified for waiting week credit and benefits for the duration of his unemployment and until he has earned four times his weekly benefit amount in insured work:

(1) **Voluntary leave.** If such individual voluntarily and without good cause attributable to the employer discontinued his employment with such employer.

(2) **Discharge for misconduct.** If such individual was discharged for misconduct, not amounting to gross misconduct connected with his work or for misconduct which interferes with and adversely affects his employment.

An individual shall not be disqualified under clauses (1) and (2) of this subdivision under any of the following conditions:

(a) If such individual voluntarily discontinued his employment to accept work offering substantially better conditions of work or substantially higher wages or both;

(b) If such individual is separated from employment due to his own serious illness provided that such individual has made reasonable efforts to retain his employment;

(c) If such individual accepts work from a base period employer which involves a change in his location of work so that said work would not have been deemed to be suitable work under the provisions of subdivision 2 and within a period of 13 weeks from the commencement of said work voluntarily discontinues his employment due to reasons which would have caused the work to be unsuitable under the provision of said subdivision 2; or

(d) If such individual left employment because he had reached mandatory retirement age and was 65 years of age or older.

(3) **Discharge for gross misconduct.** If such individual was discharged for gross misconduct connected with his work or gross misconduct which interferes with and adversely affects his 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.

For the purpose of this clause "gross misconduct" shall be defined as misconduct involving assault and battery or the malicious destruction of property or the theft of money or property of a value of \$100 or more or arson or sabotage or embezzlement. However, no person shall be deemed to have been discharged for gross misconduct for purposes of this chapter unless (1) the person makes an admission to the conduct in writing or under oath, or (2) the person is found to have engaged in such conduct by an appeals tribunal established pursuant to section 268.10, or (3) the person has been convicted by a court of competent jurisdiction of acts constituting gross misconduct.

(4) **Limited or no charge of benefits.** Benefits paid subsequent to an individual's separation under any of the foregoing clauses, excepting clause (2)(c), 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.

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Subd. 2. Failure to apply for or accept suitable work or re-employment. An individual shall be disqualified for waiting week credit and benefits until he has earned four times his weekly benefit amount in insured 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 accept suitable re-employment offered by a base period employer.

(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.

Subd. 3. 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 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 strike or lockout caused by an employer's willful failure to observe the terms of the safety and health section of a union contract or failure to comply with an official citation for a violation of federal and state laws involving occupational safety and health; provided, however, that benefits paid in accordance with this provision shall not be charged to the employer's experience rating account if, following official appeal proceedings, it is held that there was no willful failure on the part of the employer,

(b) who becomes unemployed because of a lockout,

(c) who is dismissed during the period of negotiation in any labor dispute and prior to the commencement of a strike, or

(d) 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 at his primary place of employ-

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ment shall not be charged to his employer's account unless the employer was a party to the particular strike or labor dispute.

Notwithstanding any other provision of this section, an individual whose last separation from employment with an employer occurred prior to the commencement of the strike or other labor dispute and was permanent or for an indefinite period, shall not be denied benefits or waiting week credit solely by reason of his failure to apply for or to accept recall to work or re-employment with the employer during any week in which the strike or other labor dispute is in progress at the establishment in which he was employed.

Subd. 4. Insured work. "Insured work" as used in this section means insured work as defined in section 268.04, subdivision 17, and employment which is covered by the provisions of the Railroad Unemployment Compensation Act or Title 5 of U.S.C. Chapter 85.

Subd. 5. Concurrent weeks. Weeks of disqualification imposed under the provisions of this section shall be concurrent where two or more disqualifying periods overlap.

Subd. 6. Week of unemployment defined. A week of unemployment, as used in this section, shall mean a week during which such individual would be otherwise eligible for benefits.

Subd. 7. Application. This section shall apply to any separation from employment or refusal of a job referral or job offer occurring in this or any other state if such employment is insured under this law, a similar law of another state, the Railroad Unemployment Act or Title 5 of U.S.C. Chapter 85.

[1977 c 4 s 8; 1977 c 242 s 1; 1977 c 297 s 19]

NOTE: Subdivision 1, as amended by Laws 1977, Chapter 4, Section 8 and Laws 1977, Chapter 297, Section 19, is effective July 2, 1977, pursuant to Laws 1977, Chapter 4, Section 11 and Laws 1977, Chapter 297, Section 23.

268.10 Determination of claims for benefits; appeals.

[For text of subd 1, see M.S.1976]

Subd. 2. Examination of claims; determination; appeal. (1) An official, designated by the commissioner, shall promptly examine each claim for benefits filed to establish a benefit year pursuant to this section, and, on the basis of the facts found, shall determine whether or not such claims are valid, and if valid, the weekly benefit amount payable, the maximum benefit amount payable during the benefit year, and the date the benefit year terminates, and such determination shall be known as the determination of validity. Notice of any such determination of validity or any redetermination as provided for in clause (4) shall be promptly given the claimant and all other interested parties. If within the time specified for the filing of wage and separation information as provided in subdivision 1, clause (2), the employer makes an allegation of disqualification or raises an issue of the chargeability to his account of benefits that may be paid on such claim, if such claim is valid, the issue thereby raised shall be promptly determined by said official and a notification of such determination delivered or mailed to the claimant and the employer. If an initial determination or an appeal tribunal decision or the commissioner's decision awards benefits, such benefits shall be paid promptly regardless of the pendency of any appeal period or any appeal or other proceeding which may thereafter be taken. Except as provided in clause (6), if an appeal tribunal decision modifies or reverses an initial determination awarding benefits, or if a commissioner's decision modifies or reverses an appeal decision awarding benefits, any benefits paid under the award of such initial determination or appeal tribunal decision shall be deemed erroneous payments.

(2) If within the benefit year an official of the department or any interested party or parties raises an issue of claimant's eligibility for benefits for any week or weeks in accordance with the requirements of the provisions of sections 268.03 to 268.24 or any official of the department or any interested party or parties or benefit

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year employer raises an issue of disqualification in accordance with the regulations of the commissioner, a determination shall be made thereon and a written notice thereof shall be given to the claimant and such other interested party or parties or benefit year employer.

(3) A determination issued pursuant to clauses (1) and (2) may be appealed by a claimant or employer within 15 days after the mailing of the notice of the determination to his last known address or personal delivery of the notice. Every notice of determination shall contain a prominent statement indicating in clear language the method of appealing the determination, the time within which such an appeal must be made, and the consequences of not appealing the determination. A timely appeal from a determination of validity in which the issue is whether an employing unit is an employer within the meaning of this chapter or whether services performed for an employer constitute employment within the meaning of this chapter shall be subject to the provisions of section 268.12, subdivision 13.

(4) At any time within one year from the date of the filing of a claim for benefits by an individual, the commissioner on his own motion may reconsider a determination made thereon and make a redetermination thereof if he finds that an error in computation or identity or the crediting of wage credits has occurred in connection therewith or if such determination was made as a result of a nondisclosure or misrepresentation of a material fact.

(5) However, the commissioner may in his discretion refer any disputed claims directly to the appeal tribunal for hearing and determination in accordance with the procedure outlined in subdivision 3 and the effect and status of such determination in such a case shall be the same as though the matter had been determined upon an appeal to such tribunal from an initial determination.

(6) If an appeal tribunal decision affirms an initial determination awarding benefits or the commissioner affirms an appeal tribunal decision awarding benefits, such decision, if finally reversed, shall not result in a disqualification and benefits paid shall neither be deemed overpaid nor shall they be considered in determining any individual employer's future contribution rate under section 268.06.

[For text of subds 3 to 10, see M.S.1976]

[1977 c 4 s 9]

268.12 Creation.

Subdivision 1. **Department of employment services; commissioner.** There is created a department of employment services under the control of a commissioner who shall be appointed by the governor under the provisions of section 15.06. The commissioner shall be selected on the basis of ability and experience without regard to political affiliations.

[For text of subds 1a to 4, see M.S.1976]

Subd. 5. **Assistance.** (1) Subject to the provisions of the state civil service act and to the other provisions of sections 268.03 to 268.24 the commissioner is authorized to appoint, and prescribe the duties and powers of, such officers, accountants, experts, and other persons as may be necessary in the performance of his duties thereunder. The commissioner may delegate to any such person so appointed such power and authority as he deems reasonable and proper for the effective administration of those sections and may, in his discretion, bond any person handling moneys or signing checks thereunder. The commissioner is authorized to adopt such personnel and fiscal regulations as he deems necessary to satisfy fiscal and personnel standards required by the secretary of labor pursuant to the Social Security Act, as amended, and the act of Congress entitled "An act to provide for the estab-

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lishment of a national employment system and to cooperate with the states in the promotion of such system and for other purposes," approved June 6, 1933, as amended. The commissioner may, subject to the approval of the commissioner of administration, also adopt regulations relating to reimbursement to department employees for travel expenses incurred while traveling on official business including allowances on a per diem basis in lieu of actual subsistence expenses incurred. The commissioner is also hereby authorized to purchase liability and property damage automobile insurance to cover any automobiles owned by the Minnesota department of employment services for the protection of its employees who may be required to operate the same in pursuit of their duties for the department.

(2) No officer or employee engaged in the administration of these sections shall, for political purposes, furnish or disclose, or aid or assist in furnishing or disclosing, any list or names of persons obtained in the administration of these sections, to a political candidate, committee, campaign manager, or to any person for delivery to a political candidate, committee, or campaign manager, and it shall be unlawful for any person to receive any such list or names for political purposes.

[For text of subds 6 to 11, see M.S.1976]

Subd. 12. **Information.** Except as hereinafter otherwise provided, information obtained from any employing unit or individual pursuant to the administration of sections 268.03 to 268.24, and from any determination as to the benefit rights of any individual shall be held confidential and shall not be disclosed or be open to public inspection in any manner revealing the individual's or employing unit's identity. Any claimant or other interested party (or his legal representative) shall be supplied with information from the records of the department of employment services, to the extent necessary for the proper presentation of his claim, contention or refutation of any claim in which he is an interested party in any proceeding under these sections with respect thereto. Subject to such restrictions as the commissioner may by regulation prescribe, such information may be made available to any agency of this or any other state, or any federal agency charged with the administration of an employment and security law or the maintenance of a system of public employment offices, any agency of this state which is required by law to provide statistical information to the bureau of labor statistics of the United States department of labor, any local human rights department within the state which has enforcement powers, or the Bureau of Internal Revenue of the United States Department of the Treasury, and information obtained in connection with administration of the employment service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service. Upon request therefor, the commissioner shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, and may furnish to any state agency similarly charged, or any local human rights department within the state which has enforcement powers, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under these sections. The commissioner may request the Comptroller of the Currency of the United States to cause an examination of the correctness of any return or report of any national banking association rendered pursuant to the provisions of these sections, and may in connection with such request, transmit any such report or return to the Comptroller of the Currency of the United States as provided in section 3305(c) of the federal internal revenue code.

All letters, reports, communications, or any other matters, either oral or written, from an employer or his workers to each other or to the commissioner or any of his agents, representatives, or employees, which shall have been written or made in connection with the requirements and administration of sections 268.03 to 268.24

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or the regulations thereunder, shall be absolutely privileged and shall not be made subject matter or basis for any suit for slander or libel in any court of this state.

[For text of subd 13, see M.S.1976]

[1977 c 172 s 2; 1977 c 237 s 1; 1977 c 297 s 20; 1977 c 305 s 31]

268.14 Free employment offices.

[For text of subds 1 to 4, see M.S.1976]

Subd. 5. **Veterans representatives.** As may be determined by the commissioner, based on a demonstrated need for the service, there shall be assigned by the commissioner to the staff of each full functioning employment service office a veterans employment representative whose activities shall be devoted to discharging the duties prescribed of a veterans employment representative. The position of veterans employment representative shall be filled by one or more employees of the department of employment services who are veterans as defined in section 197.447.

[1977 c 151 s 1]

268.18 Return of benefits; offenses.

[For text of subds 1 and 2, see M.S.1976]

Subd. 3. **False representations; concealment of facts; penalty.** Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact to obtain or increase any benefit or other payment under sections 268.03 to 268.24, or under the employment security law of any state or of the federal government or of a foreign government, either for himself or any other person, shall be guilty of a gross misdemeanor.

Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining a subject employer or to avoid or reduce any contribution or other payment required from an employing unit under those sections or under the employment security law of any state or of the federal government, or who wilfully fails or refuses to make any such contributions or other payment or to furnish any reports at the time when required hereunder or to produce or permit the inspection or copying of records as required hereunder, shall be guilty of a gross misdemeanor.

[For text of subd 4, see M.S.1976]

[1977 c 4 s 10]

268.31 Development of youth employment opportunities.

To the extent of available funding, the commissioner of employment services shall hire individuals from the ages of 14 years up to 22 years for a maximum of 12 weeks, not to exceed 40 hours per week per individual, during the summer for the purpose of placing such individuals in service with the department of employment services and with other departments, agencies and instrumentalities of the state, county, local governments, school districts and with nonprofit organizations. Priority for employment shall be given to those young individuals between the ages of 16 years up to 22 years.

[1977 c 254 s 1]

268.32 Rate of pay.

Persons hired pursuant to sections 268.31 to 268.36 shall be compensated at the federal minimum wage rate. Persons hired in a supervisory capacity shall be compensated at a rate established by the commissioner.

[1977 c 254 s 2]

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268.33 Eligibility for employment and placement.

Subdivision 1. The department of employment services shall promulgate rules determining the eligibility for employment and placement pursuant to sections 268.31 to 268.36. The department shall have emergency powers to implement rules for carrying out sections 268.31 to 268.36.

Subd. 2. The department of employment services shall, for the purposes of sections 268.31 to 268.36, be exempt from complying with any law relating to hiring by departments, agencies or instrumentalities of the state.

[1977 c 254 s 3]

268.34 Employment contracts with governmental subdivisions and nonprofit organizations.

The commissioner is authorized to enter into arrangements with existing public and private nonprofit organizations and agencies with experience in administering summer youth employment programs for the purpose of providing employment opportunities in furtherance of sections 268.31 to 268.36. The commissioner shall enter into these agreements with organizations designated by the prime sponsors authorized under the comprehensive employment and training act (CETA). The department of employment services shall retain ultimate responsibility for the administration of this employment program, including but not limited to, approval of summer job opportunities, review of applicants therefor, placement of youth in jobs subject to the approval of prime sponsors and the disbursement of funds. Any administrative costs, with the exception of worker's compensation, incurred by any nonprofit organization or any governmental agency with which an arrangement has been made by the department of employment services shall not be paid from appropriated funds available for the purposes of sections 268.31 to 268.36.

[1977 c 254 s 4]

268.35 Allocation of funds.

The commissioner shall allocate funds to recipient organizations and agencies throughout the state taking into account in making such allocations the youth population of the county adjusted to eliminate the influence of post secondary educational institutions located in the county, the county unemployment rate and the number of families living below the poverty level in the county in which the recipient organization or agency is located.

[1977 c 254 s 5]

268.36 Report to the governor and the legislature.

The commissioner, after consultation with the CETA prime sponsors, shall evaluate the effectiveness of the youth employment program, taking into account the extent of other programs which are providing summer employment opportunities for youth covered under sections 268.31 to 268.36, and shall report to the governor and the legislature no later than January 15 of each even numbered year with an evaluation of the program and any recommendations for improvements.

[1977 c 254 s 6]

CHAPTER 270. DEPARTMENT OF REVENUE

Sec. 270.02	Department of revenue; commissioner of revenue.	Sec. 270.494	Certain townships and cities option to elect to reinstate the office of assessor. [New]
270.06	Powers and duties.	270.50	Employment of licensed assessors.
270.10	Orders, decisions, reports.	270.60	Tax refund agreements with Indians.
270.11	Powers; meetings.		[New]

270.02 Department of revenue; commissioner of revenue.

[For text of subd 1, see M.S.1976]