

CHAPTER 268

DEPARTMENT OF ECONOMIC SECURITY

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268.0111 DEFINITIONS.

[For text of subs 1 to 4a, see M.S.1998]

Subd. 5. **Income maintenance and support services.** "Income maintenance and support services" means programs through which the state or its subdivisions provide direct financial or in-kind support to unemployed or underemployed persons, including reemployment compensation, the Minnesota family investment program, general assistance, food stamps, energy assistance, disability determinations, and child care. Income maintenance and support services do not include medical assistance, aging services, social services, community social services, mental health services, or services for the emotionally disturbed, the mentally retarded, or residents of nursing homes.

[For text of subs 5a and 6, see M.S.1998]

Subd. 7. **Public assistance.** "Public assistance" means the Minnesota family investment program and general assistance.

[For text of subs 8 and 9, see M.S.1998]

History: 1999 c 107 s 66; 1999 c 159 s 117,118

268.0122 POWERS AND DUTIES.

[For text of subd 1, see M.S.1998]

Subd. 2. **Specific powers.** The commissioner of economic security shall:

(1) administer and supervise all forms of reemployment compensation provided for under federal and state laws that are vested in the commissioner, including make investigations and audits, secure and transmit information, and make available services and facilities as the commissioner considers necessary or appropriate to facilitate the administration of any other states, or the federal Economic Security Law, and accept and use information, services, and facilities made available by other states or the federal government;

(2) administer and supervise all employment and training services assigned to the department under federal or state law;

(3) review and comment on local service unit plans and community investment program plans and approve or disapprove the plans;

(4) establish and maintain administrative units necessary to perform administrative functions common to all divisions of the department;

(5) supervise the county boards of commissioners, local service units, and any other units of government designated in federal or state law as responsible for employment and training programs;

(6) establish administrative standards and payment conditions for providers of employment and training services;

(7) act as the agent of, and cooperate with, the federal government in matters of mutual concern, including the administration of any federal funds granted to the state to aid in the performance of functions of the commissioner;

(8) obtain reports from local service units and service providers for the purpose of evaluating the performance of employment and training services; and

(9) review and comment on plans for Indian tribe employment and training services and approve or disapprove the plans.

Subd. 3. **Duties as state agency.** The commissioner shall:

(1) administer the reemployment compensation benefits laws and related programs;

(2) administer the aspects of the Minnesota family investment program, general assistance, and food stamps that relate to employment and training services, subject to the contract under section 268.86, subdivision 2;

(3) administer wage subsidies and the discretionary employment and training fund;

(4) administer a national system of public employment offices as prescribed by United States Code, title 29, chapter 4B, the Wagner-Peyser Act, and other federal employment and training programs;

(5) cooperate with the federal government and its employment and training agencies in any reasonable manner as necessary to qualify for federal aid for employment and training services and money;

(6) enter into agreements with other departments of the state and local units of government as necessary;

(7) certify employment and training service providers and decertify service providers that fail to comply with performance criteria according to standards established by the commissioner;

(8) provide consistent, integrated employment and training services across the state;

(9) establish the standards for all employment and training services administered under this chapter;

(10) develop standards for the contents and structure of the local service unit plans and plans for Indian tribe employment and training services;

(11) provide current state and substate labor market information and forecasts, in cooperation with other agencies;

(12) identify underserved populations, unmet service needs, and funding requirements;

(13) consult with the council for the blind on matters pertaining to programs and services for the blind and visually impaired; and

(14) enter into agreements with Indian tribes as necessary to provide employment and training services as funds become available.

[For text of subds 4 to 7, see M.S.1998]

History: 1999 c 107 s 66; 1999 c 159 s 119

268.021 [Repealed, 1999 c 107 s 67]

268.022 WORKFORCE DEVELOPMENT FUND.

Subdivision 1. **Determination and collection of special assessment.** (a) In addition to all other taxes, assessments, and payment obligations under chapter 268, each employer, except an employer making payments in lieu of taxes is liable for a special assessment levied at the rate of one-tenth of one percent per year until June 30, 2000, and seven-hundredths of one percent per year on and after July 1, 2000, on all taxable wages, as defined in section 268.04, subdivision 25b. The assessment shall become due and be paid by each employer to the department on the same schedule and in the same manner as other taxes.

(b) The special assessment levied under this section shall not affect the computation of any other taxes, assessments, or payment obligations due under this chapter.

Subd. 2. **Disbursement of special assessment funds.** (a) The money collected under this section shall be deposited in the state treasury and credited to the workforce development fund to provide for employment and training programs. The workforce development fund is created as a special account in the state treasury.

(b) All money in the fund not otherwise appropriated or transferred is appropriated to the commissioner who must act as the fiscal agent for the money and must disburse that money for the purposes of this section, not allowing the money to be used for any other obligation of the state. All money in the workforce development fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as are provided by law for the other special accounts in the state treasury, except that all interest or net income resulting from the investment or deposit of money in the fund shall accrue to the fund for the purposes of the fund.

(c) No more than five percent of the funds collected in each fiscal year may be used by the department of economic security for its administrative costs.

(d) Reimbursement for costs related to collection of the special assessment shall be in an amount negotiated between the commissioner and the United States Department of Labor.

(e) The funds appropriated to the commissioner, less amounts under paragraphs (c) and (d) shall be allocated as follows:

(1) 40 percent to be allocated annually to substate grantees for provision of expeditious response activities under section 268.9771 and worker adjustment services under section 268.9781; and

(2) 60 percent to be allocated to activities and programs authorized under sections 268.975 to 268.98.

(f) Any funds not allocated, obligated, or expended in a fiscal year shall be available for allocation, obligation, and expenditure in the following fiscal year.

History: 1999 c 223 art 3 s 3

268.03 DECLARATION OF PUBLIC POLICY.

Subdivision 1. **Statement.** The public policy underlying sections 268.03 to 268.23 is as follows: Economic insecurity due to involuntary unemployment is a serious threat to the well-being of the people of Minnesota. Involuntary unemployment is a subject of general interest and concern that requires appropriate action by the legislature to prevent its spread and to lighten its burdens. The public good and the well-being of the citizens of Minnesota will be promoted by providing, under the taxing powers of the state for the compulsory setting aside of reserves to be used for the benefit of individuals unemployed through no fault of their own. In recognition of its focus on providing a temporary partial wage replacement to

assist the unemployed worker to become reemployed, this program will be known as "reemployment compensation."

[For text of subd 2, see M.S.1998]

History: 1999 c 107 s 66

268.035 DEFINITIONS.

[For text of subs 1 and 2, see M.S.1998]

Subd. 3. **Back pay.** "Back pay" means a retroactive payment of money by an employer to an employee or former employee for lost wages as determined by an arbitration award, administrative or judicial decision, or negotiated settlement.

Subd. 4. **Base period.** "Base period" means:

(1) the first four of the last five completed calendar quarters immediately prior to the effective date of an applicant's benefit account;

(2) if during the base period under clause (1) an applicant received workers' compensation for temporary disability under chapter 176 or a similar law of the United States, or if an applicant whose own serious illness caused a loss of work for which the applicant received compensation for loss of wages from some other source, the applicant may request a base period as follows:

(i) if an applicant was compensated for a loss of work of seven to 13 weeks, the base period shall be the first four of the last six completed calendar quarters prior to the effective date of the benefit account;

(ii) if an applicant was compensated for a loss of work of 14 to 26 weeks, the base period shall be the first four of the last seven completed calendar quarters prior to the effective date of the benefit account;

(iii) if an applicant was compensated for a loss of work of 27 to 39 weeks, the base period shall be the first four of the last eight completed calendar quarters prior to the effective date of the benefit account; and

(iv) if an applicant was compensated for a loss of work of 40 to 52 weeks, the base period shall be the first four of the last nine completed calendar quarters prior to the effective date of the benefit account;

(3) if the applicant qualifies for a base period under clause (2), but has insufficient wage credits to establish a benefit account, the applicant may request a base period of the last four completed calendar quarters prior to the date the applicant's benefit account is effective. This base period may be used only once during any five-calendar-year period; and

(4) no base period under clause (1), (2), or (3) shall include wage credits upon which a prior benefit account was established.

Subd. 5. **Benefits.** "Benefits" means the money payments available to an applicant.

Subd. 6. **Benefit year.** "Benefit year" means the period of 52 calendar weeks beginning the date a benefit account is effective. For a benefit account established effective any January 1, April 1, July 1, October 1, or January 2, 2000, or October 2, 2011, the benefit year will be a period of 53 calendar weeks.

[For text of subd 7, see M.S.1998]

Subd. 8. **Applicant.** "Applicant" means an individual who has filed an application for benefits and has established or is pursuing the establishment of a benefit account.

[For text of subs 9 to 11, see M.S.1998]

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

(1) an employee's entire employment if:

(i) the employment is performed entirely in Minnesota;

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

(iii) the employment is not performed primarily in any one state but some of the employment is performed in Minnesota and the base of operations or the place from which the employment is directed or controlled is in Minnesota; or the base of operations or place from which the employment is directed or controlled is not in any state in which part of the employment is performed, but the employee's residence is in Minnesota;

(2) an employee's employment wherever performed within the United States or Canada, if:

(i) the employment is not covered under the reemployment compensation law of any other state or Canada; and

(ii) the place from which the employment is directed or controlled is in Minnesota;

(3) the employment of an employee who is a citizen of the United States, performed outside the United States, except in Canada, in the employ of an American employer if:

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

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

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

(iv) an "American employer," for the purposes of this subdivision, means an individual who is a resident of the United States, or a partnership if two-thirds or more of the partners are residents of the United States, or a trust, if all of the trustees are residents of the United States, or a corporation organized under the laws of the United States, or of any state; or

(v) as used in this subdivision, the term "United States" includes the states, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands;

(4) all employment performed by an officer or member of the crew of an American vessel on or in connection with the vessel, if the operating office from which the operations of the vessel operating on navigable waters within, or within and without, the United States are ordinarily and regularly supervised, managed, directed, and controlled is in Minnesota; and

(5) for the purposes of satisfying disqualifications under section 268.095, subdivision 10, "covered employment" shall include covered employment under a reemployment compensation law of any other state or employment covered under a reemployment compensation program established by an act of Congress.

[For text of subd 13, see M.S.1998]

Subd. 14. **Employer.** "Employer" means any of the following which has had one or more employees during the current or the prior calendar year:

(1) any individual or type of organization, resident or nonresident, for profit or nonprofit, religious, charitable, or educational, including any partnership, limited liability company, trust, estate, or corporation, domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor of any of the foregoing, or the legal representative of a deceased person;

(2) any government entity, state or federal, foreign or domestic, Indian tribe, including any subdivision thereof and any instrumentality thereof owned wholly or in part;

(3) any organization or person that has elected, under section 268.042, to be subject to sections 268.03 to 268.23;

(4) a joint venture composed of one or more employers;

(5) any nonprofit organization or government agency providing or authorizing the hiring of homeworkers, personal care attendants, or other individuals performing similar services in a private home is the employer of the homeworker, attendant, or similar worker whether the organization or agency pays the employee directly or provides funds to the recipient of the services to pay for the services. This clause does not apply to the state of Minnesota or any county that provides federal, state, or local funds to a child care provider either directly or indirectly through a parent who is a child care assistance recipient; or

(6) each individual employed to perform or assist in performing the work of any agent or employee shall be considered to be employed by that employer whether the individual was hired or paid directly by that employer or by the agent or employee, provided the employer had actual or constructive knowledge of the work.

Subd. 15. **Employment.** "Employment" means service performed by:

(1) an individual who is considered an employee under the common law of employer-employee and not considered an independent contractor;

(2) an officer of a corporation;

(3) a member of a limited liability company who is considered an employee under the common law of employer-employee; or

(4) an individual who performs services for a person for compensation, as:

(i) an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, beverages, or laundry or dry cleaning services; or

(ii) a traveling or city salesperson, other than as an agent-driver or commission-driver, engaged full-time in the solicitation on behalf of the 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.

This clause shall apply only if the contract of service provides that substantially all of the services are to be performed personally by the individual, and the services are part of a continuing relationship with the person for whom the services are performed, and the individual does not have a substantial investment in facilities used in connection with the performance of the services, other than facilities for transportation.

[For text of subs 16 and 17, see M.S.1998]

Subd. 18. **Fund.** "Fund" means the Minnesota reemployment compensation trust fund established by section 268.194.

Subd. 19. **High quarter.** "High quarter" means the calendar quarter in an applicant's base period with the highest amount of wage credits.

Subd. 20. **Noncovered employment.** "Noncovered employment" means:

(1) employment for the United States government or an instrumentality thereof, including military service;

(2) employment for an Indian, an Indian-controlled employer, and Indian tribe, or any wholly controlled subsidiaries or subdivisions, if the employment is performed on an Indian reservation or Indian Trust Land;

(3) employment for a state, other than Minnesota, or a political subdivision or instrumentality thereof;

(4) employment for a foreign government;

(5) employment for an instrumentality wholly owned by a foreign government, if the employment is of a character similar to that performed in foreign countries by employees of the United States government or an instrumentality thereof and the United States Secretary of State has certified that the foreign government grants an equivalent exemption to similar employment performed in the foreign country by employees of the United States government and instrumentalities thereof;

(6) employment covered under United States Code, title 45, section 351, the Railroad Unemployment Insurance Act;

(7) employment covered by a reciprocal arrangement between the commissioner and another state or the federal government which provides that all employment performed by an individual for an employer during the period covered by the reciprocal arrangement is considered performed entirely within another state;

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

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

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

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

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

(13) employment as a member of the Minnesota national guard or air national guard;

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

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

(16) employment for Minnesota that is a major policy making or advisory position in the unclassified service, including those positions established pursuant to section 43A.08, subdivision 1a;

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

(18) domestic employment in a private household, local college club, or local chapter of a college fraternity or sorority performed for a person, only if the wages paid in any calendar quarter in either the current or preceding calendar year to all individuals in domestic employment totaled less than \$1,000.

"Domestic employment" includes all service in the operation and maintenance of a private household, for a local college club, or local chapter of a college fraternity or sorority as distinguished from service as an employee in the pursuit of an employer's trade or business;

(19) employment of an individual by a son, daughter, or spouse, and employment of a child under the age of 18 by the child's father or mother;

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

(21) employment for a school, college, or university by a student who is enrolled and is regularly attending classes at the school, college, or university;

(22) employment of an individual who is enrolled as a student in a full-time program at a nonprofit or public educational institution that maintains a regular faculty and curriculum and has a regularly organized body of students in attendance at the place where its educational activities are carried on, taken for credit at the institution, that combines academic instruction with work experience, if the employment is an integral part of the program, and the institution has so certified to the employer, except that this clause shall not apply to employment in a program established for or on behalf of an employer or group of employers;

(23) employment of university, college, or professional school students in an internship or other training program with the city of St. Paul or the city of Minneapolis pursuant to Laws 1990, chapter 570, article 6, section 3;

(24) employment for a hospital by a patient of the hospital. "Hospital" means an institution that has been licensed by the department of health as a hospital;

(25) employment as a student nurse for a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in an accredited nurses' training school;

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

(27) employment as an insurance salesperson, by other than a corporate officer, if all the compensation for the employment is solely by way of commission. The word "insurance" shall include an annuity and an optional annuity;

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

(29) employment as a real estate salesperson, by other than a corporate officer, if all the compensation for the employment is solely by way of commission;

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

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

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

(33) employment in "agricultural employment" unless considered "covered agricultural employment" under subdivision 11; or

(34) if employment during one-half or more of any pay period was covered employment, all the employment for the pay period shall be considered covered employment; but if during more than one-half of any pay period the employment was noncovered employment, then all of the employment for the pay period shall be considered noncovered employment. "Pay period" means a period of not more than a calendar month for which a payment or compensation is ordinarily made to the employee by the employer.

[For text of subd 21, see M.S.1998]

Subd. 21a. **Reemployment assistance training.** (a) An applicant is in "reemployment assistance training" when:

(1) reasonable and suitable employment for the applicant does not exist in the labor market area and it is necessary that the applicant receive training in order to obtain suitable employment;

(2) the curriculum, facilities, staff, and other essentials are adequate to achieve the training objective;

(3) the training is vocational in nature or short term academic training vocationally directed to an occupation or skill for which there are reasonable employment opportunities available to the applicant;

(4) the training course is considered full time by the training provider; and

(5) the applicant is making satisfactory progress in the training.

(b) Full-time training provided through the dislocated worker program, the Trade Act of 1974, as amended, or the North American Free Trade Agreement shall be considered "reemployment assistance training," if that training course is in accordance with the requirements of that program.

(c) An applicant will be considered in reemployment assistance training only if the training course has actually started or is scheduled to start within 30 calendar days.

[For text of subd 22, see M.S.1998]

Subd. 23. **State's average annual and average weekly wage.** (a) On or before June 30 of each year, the commissioner shall calculate the state's average annual wage and the state's average weekly wage in the following manner:

(1) The sum of the total monthly covered employment reported by all employers for the prior calendar year shall be divided by 12 to calculate the average monthly covered employment.

(2) The sum of the total wages paid for all covered employment reported by all employers for the prior calendar year shall be divided by the average monthly covered employment to calculate the state's average annual wage.

(3) The state's average annual wage shall be divided by 52 to calculate the state's average weekly wage.

(b) For purposes of calculating the amount of taxable wages, the state's average annual wage shall apply to the calendar year following the calculation.

(c) For purposes of calculating the state's maximum weekly benefit amount payable on any reemployment compensation account, the state's average weekly wage shall apply to the 12-month period beginning August 1 of the calendar year of the calculation.

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

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

If prospects are unfavorable, employment at lower skill or wage levels is suitable if the applicant is reasonably suited for the employment because of education, training, work experience, or ability.

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

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

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

(e) If a majority of the applicant's wage credits were earned from part-time employment, part-time employment in a position with comparable skills and comparable hours that pays average gross weekly wages equal to or more than 150 percent of the applicant's weekly benefit amount shall be considered suitable employment.

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

(g) Employment shall not be considered suitable if:

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

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

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

Subd. 24. **Taxable wages.** (a) "Taxable wages" means those wages paid to an employee in covered employment each calendar year up to an amount equal to 60 percent of the state's average annual wage, rounded to the nearest \$1,000.

(b) Taxable wages includes the amount of wages paid for covered employment by the employer's predecessor when there has been an experience rating record transfer under section 268.051, subdivision 4.

[For text of subd 25, see M.S.1998]

Subd. 26. **Unemployed.** An applicant shall be considered "unemployed": (1) in any week that the applicant performs no service in employment, covered employment, noncovered employment, self-employment, or volunteer work, and with respect to which the applicant has no earnings; or (2) in any week of less than 32 hours of service in employment, covered employment, noncovered employment, self-employment, or volunteer work if the earnings with respect to that week are less than the applicant's weekly benefit amount.

Subd. 27. **Wage credits.** "Wage credits" mean the amount of wages paid within an applicant's base period for covered employment.

[For text of subds 28 and 29, see M.S.1998]

Subd. 30. **Wages paid.** (a) "Wages paid" means the amount of wages that have been actually paid or that have been credited to or set apart so that payment and disposition is under the control of the employee. Wage payments delayed beyond the regularly scheduled pay date are considered "wages paid" on the missed pay date. Back pay shall be considered "wages paid" on the date of actual payment. Any wages earned but not paid with no scheduled date of payment shall be considered "wages paid" on the last day of employment.

(b) Wages paid shall not include wages earned but not paid except as provided for in this subdivision.

[For text of subd 31, see M.S.1998]

Subd. 32. **Weekly benefit amount.** "Weekly benefit amount" means the amount of benefits computed under section 268.07, subdivision 2, paragraph (b).

History: 1999 c 107 s 2-15,66

NOTE: The amendment to subdivision 4 by Laws 1999, chapter 107, section 3, is effective with applications for benefits filed on and after July 1, 2000. Laws 1999, chapter 107, section 68.

268.042 EMPLOYERS COVERAGE.

[For text of subd 1, see M.S.1998]

Subd. 3. **Election agreements; termination.** (a) Any employer that has employment performed for it that does not constitute covered employment, may file with the commissioner a written election that all such employment, in one or more distinct establishments or places of business, shall be considered covered employment for not less than two calendar years. Upon the written approval of the commissioner, the employment shall constitute covered employment from and after the date stated in the approval. The employment shall cease to be considered covered employment as of the first day of January of any calendar year only if at least 30 calendar days prior to the first day of January the employer has filed with the commissioner a written notice to that effect.

(b) The commissioner must terminate any election agreement under this subdivision upon 30 calendar days' notice, if the employer fails to pay all taxes due or payments in lieu of taxes due the fund.

[For text of subd 4, see M.S.1998]

History: 1999 c 107 s 16

268.045 EMPLOYER TAX OR REIMBURSABLE ACCOUNTS.

(a) The commissioner shall maintain a tax account for each taxpaying employer and a reimbursable account for each employer that is liable for payments in lieu of taxes if that em-

ployer has employees in covered employment in the current or the prior calendar year, except as provided in this section, and shall charge the account for any benefits determined chargeable to the employer under section 268.047 and shall credit the tax account with all the taxes paid, or if the employer is liable for payments in lieu of taxes, shall credit the reimbursable account with the payments made.

(b) Two or more related corporations concurrently employing the same employees and compensating those employees through a common paymaster that is one of the corporations may apply to the commissioner to establish a common paymaster tax account that shall be the tax account of the common paymaster corporation. If approved, the separate tax accounts shall be maintained, but the employees compensated through the common paymaster shall be reported as employees of the common paymaster corporation. The corporations using the common paymaster tax account shall be jointly and severally liable for any unpaid taxes, penalties, and interest owing from the common paymaster tax account.

(c) Two or more employers having 50 percent or more common ownership and compensating employees through a single payer that is one of the employers may apply to the commissioner for a merging of the experience rating records of the employers into a single joint tax account.

If approved, the joint tax account shall be effective on that date assigned by the commissioner and shall remain in effect for not less than two calendar years, and continuing unless written notice terminating the joint tax account is filed with the commissioner. The termination shall be effective on January 1 next following the filing of the written notice of termination.

The employers in the joint tax account shall be jointly and severally liable for any unpaid taxes, penalties, and interest owing from the joint tax account.

(d) Two or more employers that are liable for payments in lieu of taxes may apply to the commissioner for the establishment of a group reimbursable account for the purpose of sharing the cost of benefits charged based upon wage credits from all employers in the group. The application shall identify and authorize a group representative to act as the group's agent for the purposes of the reimbursable account. If approved, the commissioner shall establish a group reimbursable account for the employers effective as of the beginning of the calendar year that the application is received. The reimbursable account shall remain in effect for not less than two calendar years and thereafter until terminated at the discretion of the commissioner or upon application by the group at least 30 calendar days prior to the end of the two year period or 30 calendar days prior to January 1 of any following calendar year. Each employer in the group shall be jointly and severally liable for payments in lieu of taxes for all benefits paid based upon wage credits from all employers in the group during the period the group reimbursable account was in effect.

History: 1999 c 107 s 17

268.047 BENEFITS CHARGED TO EMPLOYER.

Subdivision 1. **General rule.** Benefits paid to an applicant, including extended, additional, and shared work benefits; shall be charged to the tax or reimbursable account of the applicant's base period employer as and when paid except as provided in subdivisions 2 and 3. The amount of benefits charged to each base period employer's tax or reimbursable account shall be the same percentage of the total amount of benefits paid as the percentage of wage credits from the employer is of the total amount of wage credits from all the applicant's base period employers.

In making computations under this subdivision, the amount of wage credits, if not a whole dollar, shall be computed to the nearest whole dollar.

Subd. 2. **Exceptions to charges for all employers.** Benefits paid shall not be charged to the tax account of a taxpaying base period employer or to the reimbursable account of a base period employer that is liable for payments in lieu of taxes when:

(1) the applicant was discharged from the employment because of aggravated employment misconduct as determined under section 268.095. This exception shall apply only to benefits paid for periods after the applicant's discharge from employment;

(2) an applicant's discharge from that employment occurred because a law required removal of the applicant from the position the applicant held;

(3) the employer provided regularly scheduled part-time employment to the applicant during the applicant's base period and continues to provide the applicant with regularly scheduled part-time employment during the benefit year of at least 90 percent of the part-time employment provided in the base period, and is an involved employer because of the applicant's loss of other employment. This exception shall terminate effective the first week that the employer fails to meet the benefit year employment requirements. This exception shall apply to educational institutions without consideration of the period between academic years or terms;

(4) the employer is a fire department or firefighting corporation or operator of a life-support transportation service, and continues to provide employment for the applicant as a volunteer firefighter or a volunteer ambulance service personnel during the benefit year on the same basis that employment was provided in the base period. This exception shall terminate effective the first week that the employer fails to meet the benefit year employment requirements;

(5) the applicant's unemployment from this employer was a direct result of the condemnation of property by a governmental agency, a fire, flood, or act of nature, where 25 percent or more of the employees employed at the affected location, including the applicant, became unemployed as a result. This exception shall not apply where the unemployment was a direct result of the intentional act of the employer or a person acting on behalf of the employer;

(6) the benefits were paid by another state as a result of the transferring of wage credits under a combined wage arrangement provided for in section 268.131;

(7) the applicant stopped working because of a labor dispute at the applicant's primary place of employment if the employer was not a party to the labor dispute; or

(8) the benefits were determined overpaid benefits under section 268.18.

Subd. 3. Exceptions to charges for taxpaying employers. Benefits paid shall not be charged to the tax account of a taxpaying base period employer when:

(1) the applicant's wage credits from that employer are less than \$500;

(2) the applicant quit the employment, unless it was determined under section 268.095, to have been because of a good reason caused by the employer or because the employer notified the applicant of discharge within 30 calendar days. This exception shall apply only to benefits paid for periods after the applicant's quitting the employment; or

(3) the employer discharged the applicant from employment because of employment misconduct as determined under section 268.095. This exception shall apply only to benefits paid for periods after the applicant's discharge from employment.

Subd. 4. Federal reimbursed benefits not charged. Regardless of subdivision 1, no employer's account shall be charged for benefits for which the fund is reimbursed by the federal government.

[For text of subd 5, see M.S. 1998]

History: 1999 c 107 s 18-21, 66

268.048 [Expired, 1997 c 80 s 3]

NOTE: This section was also amended by Laws 1999, chapter 107, section 22, to read as follows:

"268.048 **Benefits not charged in welfare-to-work.**

(a) The commissioner shall, prior to computing a tax rate, remove benefit charges from the tax account of a taxpaying employer if the claimant to whom those benefits were paid was:

(1) a primary wage earner who was a recipient of cash benefits under a Minnesota welfare program in the calendar quarter or immediately preceding calendar quarter that wages were first paid by that employer;

(2) paid wages by that employer in no more than two calendar quarters; and

(3) paid wages by that employer of less than \$3,000.

(b) Paragraph (a), clauses (2) and (3), shall apply to any calendar quarter and is not limited to quarters in the claimant's base period.

If the commissioner finds that an employer discharged the claimant, or engaged in the employment practice of discharging workers, in order to meet the requirements of paragraph (a), clauses (2) and (3), this section shall not apply. In addition, the employer's action shall constitute employer misconduct and the penalties under section 268.184 shall be assessed."

268.051 EMPLOYERS TAXES.

Subdivision 1. **Payments.** (a) Taxes shall accrue and become payable by each employer for each calendar year that the employer paid wages to employees in covered employment, except for:

(1) nonprofit organizations that elect to make payments in lieu of taxes as provided in section 268.053; and

(2) the state of Minnesota and political subdivisions, unless they elect to pay taxes as provided in section 268.052.

Each employer shall pay taxes quarterly, at the employer's assigned tax rate, on the taxable wages paid to each employee. The taxes shall be paid to the fund on or before the last day of the month following the end of the calendar quarter.

(b) The tax may be paid in an amount to the nearest whole dollar.

(c) When the tax for any calendar quarter is less than \$1, the tax shall be disregarded.

[For text of subd 1a, see M.S.1998]

Subd. 2. **Computation of tax rates.** (a) For each calendar year the commissioner shall compute the tax rate of each taxpaying employer that qualifies for an experience rating by adding the minimum tax rate to the employer's experience rating.

(b) The minimum tax rate shall be six-tenths of one percent if the amount in the fund is less than \$200,000,000 on June 30 of the prior calendar year; or five-tenths of one percent if the fund is more than \$200,000,000 but less than \$225,000,000; or four-tenths of one percent if the fund is more than \$225,000,000 but less than \$250,000,000; or three-tenths of one percent if the fund is more than \$250,000,000 but less than \$275,000,000; or two-tenths of one percent if the fund is \$275,000,000 but less than \$300,000,000; or one-tenth of one percent if the fund is \$300,000,000 or more.

(c) For the purposes of this subdivision the fund shall not include any money borrowed from the federal unemployment trust fund pursuant to section 268.194, subdivision 6.

Subd. 3. **Computation of a taxpaying employer's experience rating.** (a) For each calendar year, the commissioner shall compute an experience rating for each taxpaying employer who has been subject to this chapter for at least the 12 calendar months prior to July 1 of the prior calendar year. The experience rating shall be the ratio obtained by dividing 125 percent of the total benefits charged to the employer's tax account during the period the employer has been subject to this chapter, but not more than the 60 calendar months ending on June 30 of the prior calendar year, by the employer's total taxable payroll for the same period.

(b) For purposes of paragraph (a), only that taxable payroll upon which taxes have been paid on or before September 30 of the prior calendar year may be used in computing an employer's experience rating.

(c) The experience rating shall be computed to the nearest one-tenth of a percent, to a maximum of 8.9 percent.

Subd. 4. **Experience rating record transfer.** (a) When an employer acquires the organization, trade or business or substantially all the assets of another employer, and there is 25 percent or more common ownership, directly or indirectly, between the predecessor and successor, the experience rating record of the predecessor employer shall be transferred as of the date of acquisition to the successor employer for the purpose of computing a tax rate.

(b) When an employer acquires a distinct severable portion of the organization, trade, business, or assets that is less than substantially all of the employing enterprises of another employer, and there is 25 percent or more common ownership, directly or indirectly, between the predecessor and successor, the successor employer shall acquire the experience rating record attributable to the portion it acquired, and the predecessor employer shall retain the experience rating record attributable to the portion that it has retained, if (1) the successor makes a written request to apply for the transfer of the experience rating record attributable to the severable portion acquired from the predecessor within 180 calendar days from the date of acquisition, and (2) files an application within the time and in the manner prescribed by the commissioner that furnishes sufficient information to substantiate the severable portion and to assign the appropriate total and taxable wages and benefit charges to the successor for experience rating purposes.

(c) The term "common ownership" for purposes of this subdivision includes ownership by a spouse, parent, child, brother, sister, aunt, uncle, niece, nephew, or first cousin, by birth or by marriage.

(d) If the successor employer under paragraphs (a) and (b) had an experience rating record at the time of the acquisition, the transferred record of the predecessor shall be combined with the successor's record for purposes of computing a tax rate.

(e) If there has been a transfer of an experience rating record under paragraph (a) or (b), employment with a predecessor employer shall not be considered to have been terminated if similar employment is offered by the successor employer and accepted by the employee.

(f) The commissioner, upon the commissioner's own motion or upon application of an employer shall determine if an employer is a successor within the meaning of this subdivision and shall send the determination to the employer by mail or electronic transmission. The determination shall be final unless an appeal is filed by the employer within 30 calendar days after the sending of the determination. Proceedings on the appeal shall be conducted in accordance with section 268.105.

(g) The commissioner may, as the result of any determination or decision regarding succession or nonsuccession, recompute the tax rate of all employers affected by the determination or decision for any year, including the year of the acquisition and subsequent years, that is affected by the transfer or nontransfer of part or all of the experience rating record. This paragraph does not apply to rates that have become final before the filing of a written request to apply for the transfer of a severable portion of the experience rating record under paragraph (b).

(h) The experience rating record for purposes of this subdivision shall consist of those factors that make up an experience rating, without the 12-month minimum required under subdivision 3.

(i) If the commissioner finds that a transaction was done, in whole or in part, to avoid an experience rating record or the transfer of an experience rating record, the commissioner may transfer all or part of the experience rating record regardless of the requirements or limitations of paragraph (a). This shall include the transferring of employees from the payroll of an employer with a higher experience rating record to the payroll of an employer with a lower experience rating record.

(j) Regardless of paragraph (a), if there is an acquisition or merger of a publicly held corporation by or with another publicly held corporation the experience rating records of the corporations shall be combined as of the date of acquisition or merger for the purpose of computing a tax rate.

Subd. 5. Tax rate for new employers. (a) Each taxpaying employer that does not qualify for an experience rating under subdivision 3, paragraph (a), except employers in a high experience rating industry, shall be assigned a tax rate the higher of (1) one percent, or (2) the state's average cost rate. For purposes of this paragraph, the state's average cost rate shall be computed annually by dividing the total amount of benefits paid all applicants during the 60 calendar months prior to July 1 of each year by the total taxable wages of all taxpaying employers during the same period. This rate for new employers shall be applicable for the calendar year following the computation date.

(b) Each taxpaying employer in a high experience rating industry that does not qualify for an experience rating under subdivision 3, paragraph (a), shall be assigned a tax rate of 8.0 percent, plus the applicable minimum tax rate.

An employer is considered to be in a high experience rating industry if:

(1) the employer is engaged in residential, commercial, or industrial construction, including general contractors;

(2) the employer is engaged in sand, gravel, or limestone mining;

(3) the employer is engaged in the manufacturing of concrete, concrete products, or asphalt; or

(4) the employer is engaged in road building, repair, or resurfacing, including bridge and tunnels and residential and commercial driveways and parking lots.

[For text of subds 6 and 7, see M.S.1998]

Subd. 8. **Solvency assessment.** (a) If the fund balance is less than \$150,000,000 on June 30 of any year, a solvency assessment on taxpaying employers will be in effect for the following calendar year. The taxpaying employer shall pay quarterly a solvency assessment of ten percent of the taxes due.

(b) The solvency assessment shall be placed into a special account from which the commissioner shall pay any interest accruing on any loan from the federal unemployment trust fund provided for under section 268.194, subdivision 6. If the commissioner determines that the balance in this special account is more than is necessary to pay the interest, the commissioner shall pay to the fund the amount in excess of that necessary to pay the interest.

History: 1999 c 107 s 23–28,66

NOTE: The amendment to subdivision 5 by Laws 1999, chapter 107, section 27, is effective January 1, 2001. Laws 1999, chapter 107, section 68.

268.052 PAYMENT TO FUND BY STATE AND POLITICAL SUBDIVISIONS.

Subdivision 1. **Payments.** In lieu of taxes payable on a quarterly basis, the state of Minnesota or its political subdivisions shall pay into the fund the amount of benefits charged to its reimbursable account under section 268.047. Payments in the amount of benefits charged to the reimbursable account during a calendar quarter shall be made on or before the last day of the month following the month that the notice of benefits charged is sent pursuant to section 268.047, subdivision 5. Past due payments in lieu of taxes shall be subject to the same interest charges and collection procedures that apply to past due taxes.

Subd. 2. **Election by state or political subdivision to be a taxpaying employer.** (a) The state or political subdivision may elect to be a taxpaying employer for any calendar year if a notice of election is filed within 30 calendar days following January 1 of that calendar year. Upon election, the state or political subdivision shall be assigned the new employer tax rate under section 268.051, subdivision 5, for the calendar year of the election and until it qualifies for an experience rating under section 268.051, subdivision 3.

(b) An election shall be for a minimum period of three calendar years following the effective date of the election and continue unless a notice terminating the election is filed not later than 30 calendar days before the beginning of the calendar year. The termination shall be effective at the beginning of the next calendar year. A termination of election shall be allowed only if the state or political subdivision has a zero experience rating and has no benefit charges to its tax account that have not yet been used in computing an experience rating under section 268.051, subdivision 3.

(c) The method of payments to the fund under subdivisions 3 and 4 shall apply to all taxes paid by or due from the state or political subdivision that elects to be taxpaying employers under this subdivision.

(d) The commissioner may allow a notice of election or a notice terminating election to be filed by mail or electronic transmission.

Subd. 3. **Method of payment by state.** To discharge its liability, the state and its wholly owned instrumentalities shall pay the fund as follows:

(1) Every self-sustaining department, institution and wholly owned instrumentality shall pay the fund in accordance with subdivision 1. For the purposes of this clause a “self-sustaining department, institution or wholly owned instrumentality” is one where the dedicated income and revenue substantially offsets its cost of operation.

(2) Every partially self-sustaining department, institution and wholly owned instrumentality shall pay the fund that same proportion of the amount that has been charged to its employer account as the proportion of the total of its income and revenue is to its annual cost of operation.

(3) Every department, institution or wholly owned instrumentality that is not self-sustaining shall pay the fund to the extent funds are available from appropriated funds.

(4) The departments, institutions and wholly owned instrumentalities, including the University of Minnesota, that have money available shall pay the fund in accordance with subdivision 1. If an applicant was paid during the base period from a special account provided by law, the payment to the fund shall be made from the special account with the approval of the department of administration and the amounts are hereby appropriated.

(5) For those departments, institutions and wholly owned instrumentalities that cannot pay the fund, the commissioner shall certify on November 1 of each calendar year to the commissioner of finance the unpaid balances. Upon receipt of the certification, the commissioner of finance shall include the unpaid balances in the biennial budget submitted to the legislature.

Subd. 4. **Method of payment by political subdivision.** A political subdivision or instrumentality thereof is authorized and directed to pay its liabilities by money collected from taxes or other revenues. Every political subdivision authorized to levy taxes may include in its tax levy the amount necessary to pay its liabilities. If the taxes authorized to be levied cause the total amount of taxes levied to exceed any limitation upon the power of a political subdivision to levy taxes, the political subdivision may levy taxes in excess of the limitations in the amounts necessary to meet its liability. The expenditures authorized shall not be included in computing the cost of government as defined in any home rule charter. The governing body of a municipality, for the purpose of meeting its liabilities, in the event of a deficit, may issue its obligations payable in not more than two years, in an amount that may cause its indebtedness to exceed any statutory or charter limitations, without an election, and may levy taxes in the manner provided in section 475.61.

History: 1999 c 107 s 29,66

268.053 PAYMENT TO FUND BY NONPROFIT ORGANIZATIONS.

Subdivision 1. **Election.** (a) Any nonprofit organization that has employees in covered employment shall pay taxes on a quarterly basis pursuant to section 268.051 unless it elects to make payments in lieu of taxes to the fund the amount of benefits charged to its employer account under section 268.047.

The organization may elect to make payments in lieu of taxes for a period of not less than three calendar years beginning with the date that the organization was determined to be an employer with covered employment by filing a notice of election not later than 30 calendar days after the date of the determination.

(b) Any nonprofit organization that makes an election will continue to be liable for payments in lieu of taxes until it files a notice terminating its election not later than 30 calendar days before the beginning of the calendar year the termination is to be effective.

(c) A nonprofit organization that has been making payments in lieu of taxes that files a notice of termination of election shall be assigned the new employer tax rate under section 268.051, subdivision 5, for the calendar year of the termination of election and until it qualifies for an experience rating under section 268.051, subdivision 3.

(d) Any nonprofit organization that has been paying taxes may elect to make payments in lieu of taxes by filing no less than 30 calendar days before January 1 of any calendar year a notice of election. An election shall be allowed only if the nonprofit organization has a zero experience rating and has no benefit charges to its tax account that have not yet been used in computing an experience rating under section 268.051, subdivision 3. The election shall not be terminable by the organization for that and the next calendar year.

(e) The commissioner may for good cause extend the period that a notice of election, or a notice of termination, must be filed and may permit an election to be retroactive.

(f) The commissioner may allow a notice of election or notice terminating election to be filed by mail or electronic transmission.

Subd. 2. **Determination and appeal.** The commissioner shall notify each nonprofit organization by mail or electronic transmission of any determination of its status as an employer with covered employment and of the effective date of any election or termination of election. The determinations shall be final unless an appeal is filed within 30 calendar days after sending of the determination. Proceedings on the appeal shall be conducted in accordance with section 268.105.

Subd. 3. **Payments.** (a) Payments in lieu of taxes, in the amount of benefits charged to the reimbursable account, during a calendar quarter, shall be made on or before the last day of the month following the month that the notice of benefits charged is sent pursuant to section 268.047, subdivision 5.

(b) Past due payments in lieu of taxes shall be subject to the same interest charges and collection procedures that apply to past due taxes.

(c) If any nonprofit organization is delinquent in making payments in lieu of taxes, the commissioner may terminate the organization's election to make payments in lieu of taxes as of the beginning of the next calendar year, and the termination shall be effective for that and the following calendar year. A nonprofit organization that has its election terminated under this paragraph shall be assigned the new employer tax rate under section 268.051, subdivision 5, until the organization qualifies for an experience rating under section 268.051, subdivision 3.

Subd. 4. Application. For purposes of this section, a nonprofit organization is an organization, or group of organizations, described in United States Code, title 26, section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a).

History: 1999 c 107 s 30

268.057 COLLECTION OF TAXES.

[For text of subs 1 and 2, see M.S.1998]

Subd. 3. Confession of judgment. (a) Any tax report or other form that is required to be filed with the commissioner concerning taxes or payments in lieu of taxes due, shall contain a written declaration that it is made under the penalties for willfully making a false report and shall contain a confession of judgment for the amount of the tax or payments in lieu of taxes shown due thereon to the extent not timely paid together with any interest and penalty due under this chapter.

(b) The commissioner may, within six years after the report or other form is filed, regardless of section 541.09, enter judgment on any confession of judgment after 20 calendar days' notice served upon the employer by mail. The judgment shall be entered by the court administrator of any county upon the filing of a photocopy of the confession of judgment along with a statement of the commissioner that the tax or payment in lieu of tax has not been paid.

Subd. 4. Costs. Any person that fails to pay any taxes, payment in lieu of taxes, or benefit overpayment, including interest and penalties, when due is liable for any filing fees, recording fees, sheriff fees, costs incurred by referral to any public or private collection agency, or litigation costs incurred in the collection of the amounts due.

If any check or money order, in payment of any amount due, is not honored when presented for payment, a fee of \$25 shall be assessed.

Costs collected shall be credited to the administration account.

[For text of subd 5, see M.S.1998]

Subd. 6. Interest on judgments. Regardless of section 549.09, if judgment is entered upon any past due tax or payment in lieu of taxes, the unpaid judgment shall bear interest at the rate specified in subdivision 5 until the date of payment.

[For text of subd 7, see M.S.1998]

Subd. 8. [Repealed, 1999 c 107 s 67]

Subd. 9. [Repealed, 1999 c 107 s 67]

Subd. 10. Priorities under legal dissolutions or distributions. In the event of any distribution of an employer's assets pursuant to an order of any court, including any receivership, assignment for benefit of creditors, adjudicated insolvency, or similar proceeding, taxes then or thereafter due shall be paid in full prior to all other claims except claims for wages of not more than \$1,000 per former employee, earned within six months of the commencement of the proceedings. In the event of an employer's adjudication in bankruptcy under federal law, taxes then or thereafter due shall be entitled to the priority provided in that law for taxes due any state.

History: 1999 c 107 s 31,32,66

268.058 LIEN, LEVY, SETOFF, AND CIVIL ACTION.

Subdivision 1. Lien. (a) Any taxes, benefit overpayments, or payments in lieu of taxes due including interest, penalties, and costs shall become a lien upon all the property, within

this state, both real and personal, of the person liable, from the date of assessment. The term "date of assessment" means the date the obligation was due.

(b) The lien is not enforceable against any purchaser, mortgagee, pledgee, holder of a Uniform Commercial Code security interest, mechanic's lien, or judgment lien creditor, until a notice of lien has been filed with the county recorder of the county where the property is situated, or in the case of personal property belonging to a nonresident person in the office of the secretary of state. When the notice of lien is filed with the county recorder, the fee for filing and indexing shall be as provided in sections 272.483 and 272.484.

(c) Notices of liens, lien renewals, and lien releases, in a form prescribed by the commissioner, may be filed with the county recorder or the secretary of state by mail, personal delivery, or by electronic transmission into the computerized filing system of the secretary of state under section 336.9-411. The secretary of state shall, on any notice filed with that office, transmit the notice electronically to the appropriate county recorder. The filing officer, whether the county recorder or the secretary of state, shall endorse and index a printout of the notice as if the notice had been mailed or delivered.

(d) County recorders and the secretary of state shall enter information on lien notices, renewals, and releases into the central database of the secretary of state. For notices filed electronically with the county recorders, the date and time of receipt of the notice and county recorder's file number, and for notices filed electronically with the secretary of state, the secretary of state's recording information, must be entered into the central database before the close of the working day following the day of the original data entry by the commissioner.

(e) The lien imposed on personal property, even though properly filed, is not enforceable against a purchaser of tangible personal property purchased at retail or personal property listed as exempt in sections 550.37, 550.38, and 550.39.

(f) A notice of lien filed has priority over any security interest arising under chapter 336, article 9, that is perfected prior in time to the lien imposed by this subdivision, but only if:

(1) the perfected security interest secures property not in existence at the time the notice of lien is filed; and

(2) the property comes into existence after the 45th calendar day following the day the notice of lien is filed, or after the secured party has actual notice or knowledge of the lien filing, whichever is earlier.

(g) The lien shall be enforceable from the time the lien arises and for ten years from the date of filing the notice of lien. A notice of lien may be renewed before expiration for an additional ten years.

(h) The lien shall be enforceable by levy under subdivision 2 or by judgment lien foreclosure under chapter 550.

(i) The lien may be imposed upon property defined as homestead property in chapter 510 but may be enforced only upon the sale, transfer, or conveyance of the homestead property.

(j) The commissioner may sell and assign to a third party the commissioner's right of redemption in specific real property for liens filed under this subdivision. The assignee shall be limited to the same rights of redemption as the commissioner, except that in a bankruptcy proceeding, the assignee does not obtain the commissioner's priority. Any proceeds from the sale of the right of redemption shall be credited to the contingent account. Any sale shall be by written agreement signed by an attorney who is a classified employee of the department designated by the commissioner for that purpose.

Subd. 2. Levy. (a) If any tax, payment in lieu of taxes, or benefit overpayment, including interest, penalties, and costs, is not paid when due, the amount may be collected by the commissioner by direct levy upon all property and rights of property of the person liable for the amount due except that exempt from execution under section 550.37. The term "levy" includes the power of distraint and seizure by any means.

(b) In addition to a direct levy, the commissioner may issue a warrant to the sheriff of any county who shall proceed within 60 calendar days to levy upon the property or rights to property of the delinquent person within the county, except that exempt under section 550.37. The sheriff shall sell that property necessary to satisfy the total amount due, together

with the commissioner's and sheriff's costs. The sales shall be governed by the law applicable to sales of like property on execution of a judgment.

(c) Notice and demand for payment of the total amount due shall be mailed to the delinquent person at least ten calendar days prior to action being taken under paragraphs (a) and (b).

(d) If the commissioner has reason to believe that collection of the amount due is in jeopardy, notice and demand for immediate payment may be made. If the total amount due is not paid, the commissioner may proceed to collect by direct levy or issue a warrant without regard to the ten calendar day period.

(e) In executing the levy, the commissioner shall have all of the powers provided in chapter 550 or any other law that provides for execution against property in this state. The sale of property levied upon and the time and manner of redemption shall be as provided in chapter 550. The seal of the court shall not be required. The levy may be made whether or not the commissioner has commenced a legal action for collection.

(f) Where any assessment has been made by the commissioner, the property seized for collection of the total amount due shall not be sold until any determination of liability has become final. No sale shall be made unless a portion of the amount due remains unpaid for a period of more than 30 calendar days after the determination of liability becomes final. Seized property may be sold at any time if:

(1) the delinquent person consents in writing to the sale; or

(2) the commissioner determines that the property is perishable or may become greatly reduced in price or value by keeping, or that the property cannot be kept without great expense.

(g) Where a levy has been made to collect the amount due and the property seized is properly included in a formal proceeding commenced under sections 524.3–401 to 524.3–505 and maintained under full supervision of the court, the property shall not be sold until the probate proceedings are completed or until the court orders.

(h) The property seized shall be returned if the owner:

(1) gives a surety bond equal to the appraised value of the owner's interest in the property, as determined by the commissioner, or

(2) deposits with the commissioner security in a form and amount the commissioner considers necessary to insure payment of the liability.

(i) If a levy or sale would irreparably injure rights in property that the court determines superior to rights of the state, the court may grant an injunction to prohibit the enforcement of the levy or to prohibit the sale.

(j) Any person who fails or refuses to surrender without reasonable cause any property or rights to property subject to levy shall be personally liable in an amount equal to the value of the property or rights not so surrendered, but not exceeding the amount due.

(k) If the commissioner has seized the property of any individual, that individual may, upon giving 48 hours notice to the commissioner and to the court, bring a claim for equitable relief before the district court for the release of the property upon terms and conditions the court considers equitable.

(l) Any person in control or possession of property or rights to property upon which a levy has been made who surrenders the property or rights to property, or who pays the amount due shall be discharged from any obligation or liability to the person liable for the amount due with respect to the property or rights to property.

(m) The notice of any levy may be served personally or by mail.

(n) The commissioner may release the levy upon all or part of the property or rights to property levied upon if the commissioner determines that the release will facilitate the collection of the liability, but the release shall not prevent any subsequent levy. If the commissioner determines that property has been wrongfully levied upon, the commissioner shall return:

(1) the specific property levied upon, at any time; or

(2) an amount of money equal to the amount of money levied upon, at any time before the expiration of nine months from the date of levy.

(o) Regardless of section 52.12, a levy upon a person's funds on deposit in a financial institution located in this state, shall have priority over any unexercised right of setoff of the financial institution to apply the levied funds toward the balance of an outstanding loan or loans owed by the person to the financial institution. A claim by the financial institution that it exercised its right to setoff prior to the levy must be substantiated by evidence of the date of the setoff, and verified by an affidavit from a corporate officer of the financial institution. For purposes of determining the priority of any levy under this subdivision, the levy shall be treated as if it were an execution under chapter 550.

Subd. 3. Right of setoff. (a) Upon certification by the commissioner to the commissioner of finance, or to any state agency that disburses its own funds, that a person has a liability under this chapter, including interest, penalties, and costs, and that the state has purchased personal services, supplies, contract services, or property from that person, the commissioner of finance or the state agency shall set off and pay to the commissioner an amount sufficient to satisfy the unpaid liability from funds appropriated for payment of the obligation of the state otherwise due the person. No amount shall be set off from any funds exempt under section 550.37 or funds due an individual who receives assistance under chapter 256.

(b) All funds, whether general or dedicated, shall be subject to setoff.

Regardless of any law to the contrary, the commissioner shall have first priority to setoff from any funds otherwise due from the department to a delinquent person.

Subd. 4. Collection by civil action. (a) Any delinquent taxes, payment in lieu of taxes, or benefit overpayment, including interest, penalties, or costs, may be collected by civil action in the name of the state of Minnesota. Civil actions brought under this subdivision shall be heard as provided under section 16D.14. In any action, judgment shall be entered in default for the relief demanded in the complaint without proof, together with costs and disbursements, upon the filing of an affidavit of default.

(b) Any person that is not a resident of this state and any resident person removed from this state, shall be considered to appoint the secretary of state as its agent for the acceptance of process in any civil action. The commissioner shall file process with the secretary of state, together with a payment of a fee of \$15 and that service shall be considered sufficient service and shall have the same force and validity as if served personally within this state. Notice of the service of process, together with a copy of the process, shall be sent by certified mail to the person's last known address. An affidavit of compliance with this subdivision, and a copy of the notice of service shall be appended to the original of the process and filed in the court.

(c) No court filing fees, docketing fees, or release of judgment fees may be assessed against the state for actions pursuant to this subdivision.

Subd. 5. Injunction forbidden. No injunction or other legal action to prevent the assessment or collection of any tax, payment in lieu of taxes, or benefit overpayment, including interest, penalties, and costs shall be allowed.

History: 1999 c 107 s 33,66

268.0625 REVOCATIONS OF BUSINESS LICENSES.

Subdivision 1. Notice of debt to licensing authority. The state of Minnesota or a political subdivision may not issue, transfer, or renew, and must revoke a license for the conduct of any profession, trade, or business, if the commissioner notifies the licensing authority that the licensee owes delinquent taxes, payments in lieu of taxes, or benefit overpayments, including interest, penalties, and costs, of \$500 or more. A licensing authority that has received such a notice may issue, transfer, renew, or not revoke the license only if the licensing authority has received a copy of the debt clearance certificate issued by the commissioner.

Subd. 2. [Part of subdivision 2 renumbered subdivision 3]

Subd. 2. Debt clearance certificate. The commissioner may issue a debt clearance certificate only if:

- (1) the licensee has fully paid any delinquent taxes, payments in lieu of taxes, or benefit overpayments, including interest, penalties, and costs; or
- (2) the licensee has entered into an agreement to pay the total amount due and is current with all the terms of that agreement.

Subd. 3. [Renumbered subdivision 4]

Subd. 3. **Definition.** For the purposes of this section, "licensee" means:

(1) an individual if the license is issued to or in the name of an individual, or the corporation, limited liability company, or partnership if the license is issued to or in the name of a corporation, limited liability company, or partnership; or

(2) an officer of a corporation, manager of a limited liability company, or a member of a partnership, or an individual who is liable for the delinquent taxes, payments in lieu of taxes, or benefit overpayments, either for the entity that the license is at issue or for another entity that the liability was incurred, or personally as a licensee. "Licensee" includes both the transferor and the transferee of the license and any holder of a license.

Subd. 4. [Renumbered subdivision 5]

Subd. 4. **Notice and right to hearing.** At least 30 calendar days before the commissioner notifies a licensing authority, a notice of action under this section shall be mailed to the licensee. If the licensee disputes the action, the licensee must appeal within 30 calendar days after the mailing of the notice to the licensee's last known address. The only issue on any appeal is whether the commissioner has complied with the requirements of this section. Proceedings on the appeal shall be conducted in accordance with section 268.105.

Subd. 5. [Repealed by amendment, 1999 c 107 s 34]

Subd. 5. **Licensing authority; duties.** Upon request, the licensing authority shall provide the commissioner with a list of all licensees, including the name, address, business name and address, social security number, and business identification number. The commissioner may request a list of the licensees no more than once each calendar year. Regardless of section 268.19, the commissioner may release information necessary to accomplish this section.

History: 1999 c 107 s 34

268.064 LIABILITY FOR DEBTS UPON ACQUISITION.

Subdivision 1. **Acquisition of organization, trade, business, or assets.** Any person who acquires all or part of the organization, trade, business or assets from an employer, is jointly and severally liable, in an amount not to exceed the reasonable value of that part of the organization, trade, business or assets acquired, for the taxes due and unpaid by the employer. The amount of liability shall, in addition, be a lien against the property or assets acquired and shall be prior to all other unrecorded liens. This section does not apply to sales in the normal course of the employer's business.

Subd. 2. **Reasonable value.** The commissioner, upon the commissioner's own motion or upon application of the acquiring person, shall determine the reasonable value of the organization, trade, business or assets acquired based on available information. The determination shall be final unless the acquiring person, within 30 calendar days after being sent the determination by mail or electronic transmission, files an appeal. Proceedings on the appeal shall be conducted in accordance with section 268.105.

Subd. 3. **Statement of amount due.** Prior to the date of acquisition, the commissioner shall furnish the acquiring person with a statement of the taxes due and unpaid upon the written request of the potential acquiring person and the written release of the obligor. No release is required after the date of acquisition.

Subd. 4. [Repealed by amendment, 1999 c 107 s 35]

History: 1999 c 107 s 35

268.065 LIABILITY OF AMOUNTS DUE FROM SUBCONTRACTORS AND EMPLOYEE LEASING FIRMS.

Subdivision 1. **Subcontractors.** A contractor who contracts with any subcontractor shall guarantee the payment of all the taxes, interest, penalties, and collection costs that are due or become due from the subcontractor with respect to taxable wages paid on the contract by:

(1) withholding sufficient money on the contract; or

(2) requiring the subcontractor to provide a sufficient bond guaranteeing the payment of all taxes, interest, penalties, and collection costs that may become due.

The contractor may make a written request for verification that the subcontractor has paid the taxes due 60 calendar days after the due date for filing the tax report that includes the final wages paid for employment performed under the contract. If the subcontractor has paid the taxes for the period covered by the contract, the commissioner may release the contractor from its liability.

The words "contractor" and "subcontractor" include individuals, partnerships, firms, or corporations, or other association of persons engaged in the construction industry.

Subd. 2. Employee leasing firms. A person whose work force consists of 50 percent or more of workers provided by employee leasing firms, is jointly and severally liable for the unpaid taxes, penalties, interest, and collection costs that are due on the wages paid on the contract with the employee leasing firm. "Employee leasing firm" means an employer that provides its employees to other persons without severing its employer-employee relationship with the worker for the services performed for the lessee.

Subd. 3. Determination of liability. The commissioner shall make a determination as to the liability under this section. The determination shall be final unless the contractor or person found to be liable files an appeal within 30 calendar days after being sent the determination by mail or electronic transmission. Proceedings on the appeal shall be conducted in accordance with section 268.105.

History: 1999 c 107 s 36

268.067 COMPROMISE.

(a) The commissioner may compromise in whole or in part any action, determination, or decision that affects only an employer and not an applicant, and that has occurred during the prior 24 months.

(b) The commissioner may at any time compromise delinquent employer taxes, payments in lieu of taxes, interest, penalties, and costs.

(c) Any compromise shall be by written order signed by an attorney who is a classified employee of the department designated by the commissioner for that purpose.

(d) Any compromise order must set out all the terms and the reason for the order and must be in the best interest of the state of Minnesota.

History: 1999 c 107 s 37,66

268.0675 NO ELECTION OF REMEDY.

Use of any remedy under this chapter for the collection of any delinquent taxes, payments in lieu of taxes, or benefit overpayment, including penalties, interest, and costs, shall not constitute an election of remedy to the exclusion of any other available remedy.

History: 1999 c 107 s 38

268.068 NOTICE TO WORKERS.

Each employer shall post and maintain printed statements of an individual's right to apply for benefits in places readily accessible to workers in the employer's service. The printed statements shall be supplied by the commissioner at no cost to an employer.

History: 1999 c 107 s 39

268.069 PAYMENT OF BENEFITS.

Subdivision 1. Requirements. The commissioner shall pay benefits from the fund to an applicant who has met each of the following requirements:

(1) the applicant has filed an application for benefits and established a benefit account in accordance with section 268.07;

(2) the applicant is not subject to a disqualification from benefits under section 268.095;

(3) the applicant has met all of the ongoing weekly eligibility requirements under sections 268.085 and 268.086;

(4) the applicant does not have an outstanding overpayment of benefits, including any penalties or interest, under section 268.18; and

(5) the applicant is not subject to a denial of benefits under section 268.182.

Subd. 2. Benefits paid from state funds. Benefits are paid from state funds and shall not be considered paid from any special insurance plan, nor as paid by an employer. An application for benefits shall not be considered a claim against an employer but shall be considered a request for benefits from the fund. The commissioner has the responsibility for the proper payment of benefits regardless of the level of interest or participation by an applicant or an employer in any determination or appeal. An applicant's entitlement to benefits shall be determined based upon that information available without regard to any common law burden of proof, and any agreement between an applicant and an employer shall not be binding on the commissioner in determining an applicant's entitlement. There shall be no presumption of entitlement or nonentitlement to benefits.

Subd. 3. Common law. There shall be no equitable or common law denial or allowance of benefits.

History: 1999 c 107 s 40,66

268.07 BENEFIT ACCOUNT.

Subdivision 1. Application for benefits; determination of benefit account. (a) An application for benefits may be filed in person, by mail, by telephone, or by electronic transmission as the commissioner shall require. The applicant must provide all requested information in the manner required. If the applicant fails to provide all requested information, the communication shall not be considered an application for benefits.

(b) The commissioner shall examine each application for benefits to determine the base period, the benefit year, the weekly benefit amount available, if any, and the maximum amount of benefits available, if any. The determination shall be known as the determination of benefit account. A determination of benefit account shall be sent to the applicant and all base period employers, by mail or electronic transmission.

(c) If a base period employer did not provide wage information for the applicant as provided for in section 268.044, the commissioner shall accept an applicant certification as to wage credits, based upon the applicant's records, and issue a determination of benefit account.

(d) The commissioner may, at any time within 24 months from the establishment of a benefit account, reconsider any determination of benefit account and make a redetermination if the commissioner finds that the determination was incorrect for any reason. A redetermination shall be promptly sent to the applicant and all base period employers, by mail or electronic transmission.

If a redetermination of benefit account reduces the weekly benefit amount or maximum amount of benefits available, any benefits that have been paid greater than the applicant was redetermined entitled is considered an overpayment of benefits under section 268.18, subdivision 1.

Subd. 2. Benefit account requirements and weekly benefit amount and maximum amount of benefits. (a) To establish a benefit account, an applicant must have:

- (1) high quarter wage credits of at least \$1,000; and
- (2) wage credits, in other than the high quarter, of at least \$250.

(b) If an applicant has established a benefit account, the weekly benefit amount available during the benefit year shall be the higher of:

- (1) 50 percent of the applicant's average weekly wage during the base period, to a maximum of 66-2/3 percent of the state's average weekly wage; or
- (2) 50 percent of the applicant's average weekly wage during the high quarter, to a maximum of the higher of \$331 or 50 percent of the state's average weekly wage.

The applicant's average weekly wage under clause (1) shall be computed by dividing the total wage credits by 52. The applicant's average weekly wage under clause (2) shall be computed by dividing the high quarter wage credits by 13.

(c) The state's maximum weekly benefit amount and the applicant's weekly benefit amount and maximum amount of benefits shall be rounded down to the next lowest whole dollar.

(d) The maximum amount of benefits available on any benefit account shall be 33-1/3 percent of the applicant's total wage credits to a maximum of 26 times the applicant's weekly benefit amount.

Subd. 3. **Second benefit account requirements.** To establish a second benefit account following the expiration of a benefit year on a prior benefit account, an applicant must have sufficient wage credits to establish a benefit account under subdivision 2 and must have performed services in covered employment after the effective date of the prior benefit account. The wages paid for that employment must equal not less than eight times the weekly benefit amount of the prior benefit account. A benefit account established sufficiently in advance of anticipated loss of employment to make the limitations of this subdivision ineffective shall not be allowed. The purpose of this subdivision is to prevent an applicant from establishing more than one benefit account as a result of one loss of employment.

Subd. 3a. **Right of appeal.** (a) A determination or redetermination of a benefit account shall be final unless an applicant or base period employer within 30 calendar days after the sending of the determination or redetermination files an appeal. Every determination or redetermination of a benefit account shall contain a prominent statement indicating in clear language the consequences of not appealing. Proceedings on the appeal shall be conducted in accordance with section 268.105.

(b) Any applicant or base period employer may appeal from a determination or redetermination of a benefit account on the issue of whether services performed constitute employment and covered employment. Proceedings on the appeal shall be conducted in accordance with section 268.105.

Subd. 3b. **Limitations.** (a) A benefit account shall be established effective the Sunday of the calendar week that the application for benefits was filed. If an individual attempted to file an application for benefits, but was prevented from filing an application by the department, the benefit account shall be effective the Sunday of the calendar week the individual first attempted to file an application.

(b) A benefit account, once established, may later be withdrawn only if:

- (1) a new application for benefits is filed and a new benefit account is established at the time of the withdrawal; and
- (2) the applicant has not served a waiting week under section 268.085, subdivision 1, clause (3).

A determination or amended determination pursuant to section 268.101, that was issued before the withdrawal of the benefit account, shall remain in effect and shall not be voided by the withdrawal of the benefit account. A determination of disqualification requiring subsequent earnings to satisfy the disqualification under section 268.095, subdivision 10, shall apply to the weekly benefit amount on the new benefit account.

(c) An application for benefits shall not be allowed prior to the Sunday following the expiration of the benefit year on a prior benefit account. Except as allowed under paragraph (b), a applicant may establish only one benefit account each 52 calendar weeks.

(d) All benefits shall be available from the fund only for weeks occurring during the applicant's benefit year.

History: 1999 c 107 s 41,66

NOTE: The amendment to subdivision 2 by Laws 1999, chapter 107, section 41, is effective July 1, 2000. Laws 1999, chapter 107, section 68.

268.085 ELIGIBILITY REQUIREMENTS.

Subdivision 1. **Eligibility conditions.** An applicant shall be eligible to receive benefits for any week if:

- (1) the applicant has an active benefit account and has filed a continued request for benefits for that week pursuant to section 268.086;
- (2) the applicant was able to work and was available for employment, and was actively seeking suitable employment. The applicant's weekly benefit amount shall be reduced one-fifth for each day the applicant is unable to work or is unavailable for employment.

This clause shall not apply to an applicant who is in reemployment assistance training.

The requirement that the applicant be available for employment and actively seeking suitable employment shall not apply each day the applicant is on jury duty;

(3) the applicant has served a waiting period of one week that the applicant is otherwise entitled to some amount of benefits. This clause shall not apply if the applicant would have been entitled to federal disaster unemployment assistance because of a disaster in Minnesota, but for the applicant's establishment of a benefit account under section 268.07; and

(4) the applicant has been participating in reemployment assistance services, such as job search and resume writing classes, if the applicant has been determined in need of reemployment assistance services by the commissioner, unless there is good cause for the applicant's failure to participate.

Subd. 2. **Not eligible.** An applicant shall not be eligible to receive benefits for any week:

(1) that occurs before the effective date of a benefit account;

(2) that occurs in a period when the applicant is a student in attendance at, or on vacation from a secondary school including the period between academic years or terms;

(3) that the applicant is incarcerated or performing court ordered community service. The applicant's weekly benefit amount shall be reduced by one-fifth for each day the applicant is incarcerated or performing court ordered community service;

(4) that the applicant is on a voluntary leave of absence, including a requested period of paid or unpaid vacation. A leave of absence is voluntary when work, that the applicant can perform, is available with the applicant's employer, but the applicant chooses not to work. An applicant who is not working as a result of a vacation period assigned by an employer under: (i) a uniform vacation shutdown, (ii) a collective bargaining agreement, or (iii) an established employer policy, shall not be ineligible under this clause;

(5) that the applicant is performing services 32 hours or more, in employment, covered employment, noncovered employment, or self-employment regardless of the amount of any earnings; or

(6) with respect to which the applicant is receiving, has received, or has filed an application for reemployment compensation benefits under any federal law or the law of any other state. If the appropriate agency finally determines that the applicant is not entitled to the benefits, this clause shall not apply.

Subd. 3. **Deductible payments.** (a) An applicant shall not be eligible to receive benefits for any week with respect to which the applicant is receiving, has received, or has filed for payment in an amount equal to or in excess of the applicant's weekly benefit amount in the form of:

(1) a severance payment. This clause shall apply to the first four weeks of payment and to one-half of the total number of any additional weeks of payment. This clause shall be applied to the period immediately following the last day of employment. The number of weeks of payment shall be determined as follows:

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

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

(2) vacation pay, paid directly by an employer for vacation periods assigned by the employer under: (i) a collective bargaining agreement, (ii) established employer policy, or (iii) uniform vacation shutdown;

(3) compensation for loss of wages under the workers' compensation law of this state or any other state or under a similar law of the United States, or compensation for loss of wages under any other insurance or fund paid in whole or in part by an employer;

(4) pension, retirement, or annuity payments from any plan contributed to by a base period employer including the United States government, except social security benefits which are provided for in subdivision 4. The base period employer contributed to the plan if the contribution is excluded from the definition of wages under section 268.035, subdivision 29, clause (1), or United States Code, title 26, section 3121, clause (2), of the Federal Insurance Contribution Act.

If the applicant receives a lump sum pension payment, that sum shall be divided by the applicant's last level of regular weekly pay to determine the number of weeks of payment. The number of weeks of payment shall be applied to the period immediately following the last day of employment. An applicant shall not be considered to have received the lump sum payment if the applicant immediately deposits that payment in a qualified pension plan or account; or

(5) holiday pay or sick pay, paid directly by an employer.

(b) If the deductible payment is less than the applicant's weekly benefit amount, benefits shall be reduced by the amount of the payment. If the computation of reduced benefits is not a whole dollar, it shall be rounded down to the next lowest dollar.

(c) If the appropriate agency finally determines that the applicant is not entitled to payments, this subdivision shall not apply.

Subd. 4. Social security benefits. (a) Any applicant aged 62 or over shall be required to state when filing an application for benefits and when filing continued requests for benefits whether the applicant is receiving, has filed for, or intends to file for, primary social security old age or disability benefits for any week during the benefit year.

(b) There shall be deducted from an applicant's weekly benefit amount 50 percent of the weekly equivalent of the primary social security old age benefit the applicant has received, has filed for, or intends to file for, with respect to that week.

(c) An applicant shall be ineligible for benefits for any week with respect to which the applicant is receiving, has received, or has filed for primary social security disability benefits.

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

(e) Any applicant who receives primary social security old age or disability benefits for periods that the applicant has been paid reemployment compensation benefits shall be considered overpaid those reemployment compensation benefits under section 268.18, subdivision 1.

Subd. 5. Deductible earnings. (a) If the applicant has earnings with respect to any week, from employment, covered employment, noncovered employment, self-employment, or volunteer work, equal to or in excess of the applicant's weekly benefit amount, the applicant shall be ineligible for benefits for that week.

(b) If the applicant has earnings, with respect to any week, that is less than the applicant's weekly benefit amount, from employment, covered employment, noncovered employment, self-employment, or volunteer work, that amount over the following shall be deducted from the weekly benefit amount:

(1) 25 percent of earnings or \$50, whichever is higher; and

(2) \$200 for earnings from service in the National Guard or a United States military reserve unit.

The resulting benefit, if not a whole dollar, shall be rounded to the next lower dollar.

(c) No deduction shall be made from an applicant's weekly benefit amount for earnings from service as a volunteer firefighter or volunteer ambulance service personnel. No deduction shall be made for jury duty pay.

(d) The applicant may report deductible earnings on continued requests for benefits at the nearest whole dollar amount.

(e) Earnings shall not include any money considered a deductible payment under subdivision 3, but shall include all other money considered wages and any other money considered earned income under state and federal law for income tax purposes.

Subd. 6. Receipt of back pay. (a) Back pay received by an applicant with respect to any week occurring in the 104 weeks prior to the payment of the back pay shall be deducted from benefits paid for that week.

If an arbitration award, administrative or judicial decision, or negotiated settlement that provides for back pay does not specify the period with respect to which it is paid, the back pay shall be applied to the period immediately following the last day of employment.

(b) If the back pay is reduced by the amount of benefits that have been paid, the amount of back pay withheld shall be:

(1) paid by the employer to the fund within 30 calendar days and subject to the same collection procedures that apply to past due taxes;

(2) applied to benefit overpayments resulting from the payment of the back pay; and

(3) credited to the maximum amount of benefits available to the applicant in a benefit year that includes the weeks for which back pay was deducted.

(c) Charges to the employer's tax or reimbursable account under section 268.047 for benefits paid the applicant shall be removed from the employer's account in the calendar quarter the fund receives payment.

(d) Payments to the fund under this subdivision shall be considered as made by the applicant.

Subd. 7. School employees. (a) No wage credits in any amount from any employment with any educational institution or institutions earned in any capacity may be used for benefit purposes for any week during the period between two successive academic years or terms if:

(1) the applicant had employment for any educational institution or institutions in the prior academic year or term; and

(2) there is a reasonable assurance that the applicant will have employment for any educational institution or institutions in the following academic year or term, that is not substantially less favorable than the employment of the prior academic year or term.

(b) Paragraph (a) shall not apply to an applicant who, at the end of the prior academic year or term, had an agreement for a definite period of employment between academic years or terms in other than an instructional, research, or principal administrative capacity and the educational institution or institutions failed to provide that employment.

(c) If benefits are denied to any applicant under paragraph (a) who was employed in the prior academic year or term in other than an instructional, research, or principal administrative capacity and who was not offered an opportunity to perform the employment in the following academic year or term, the applicant shall be entitled to retroactive benefits for each week during the period between academic years or terms that the applicant filed a timely continued request for benefits, but benefits were denied solely because of paragraph (a).

(d) An educational assistant shall not be considered to be in an instructional, research, or principal administrative capacity.

(e) Paragraph (a) shall apply to any vacation period or holiday recess if the applicant was employed immediately before the vacation period or holiday recess, and there is a reasonable assurance that the applicant will be employed immediately following the vacation period or holiday recess.

(f) This subdivision shall apply to employment with an educational service agency if the applicant performed the services at an educational institution or institutions. "Educational service agency" means a governmental agency or entity established and operated exclusively for the purpose of providing services to one or more educational institutions. This subdivision shall also apply to employment with Minnesota or a political subdivision, or a nonprofit organization, if the services are provided to or on behalf of an educational institution or institutions.

(g) Paragraphs (a) and (e) shall apply beginning the Sunday of the week that there is a reasonable assurance of employment.

(h) Employment with multiple education institutions shall be aggregated for purposes of application of this subdivision.

(i) If all of the applicant's employment with any educational institution or institutions during the prior academic year or term consisted of on-call employment, and the applicant has a reasonable assurance of any on-call employment with any educational institution or institutions for the following academic year or term, it shall not be considered substantially less favorable employment.

(j) Paragraph (a) shall also apply to the period between two regular but not successive terms.

(k) A "reasonable assurance" may be written, oral, implied, or established by custom or practice.

(l) An "educational institution" is an educational entity operated by Minnesota or a political subdivision or an instrumentality thereof, or an educational organization described in United States Code, title 26, section 501(c)(3) of the federal Internal Revenue Code, and exempt from income tax under section 501(a).

Subd. 8. Services for school contractors. Wage credits from an employer are subject to subdivision 7, if:

(1) the employment was provided pursuant to a contract between the employer and an elementary or secondary school; and

(2) the contract was for services that the elementary or secondary school could have had performed by its employees.

Subd. 9. Business owners. Wage credits from an employer may not be used for benefit purposes by any applicant who:

(1) individually, jointly, or in combination with the applicant's spouse, parent, or child owns or controls directly or indirectly 25 percent or more interest in the employer, or is the spouse, parent, or minor child of any individual who owns or controls directly or indirectly 25 percent or more interest in the employer; and

(2) is not permanently separated from employment.

This subdivision is effective when the applicant has been paid four times the applicant's weekly benefit amount in the current benefit year.

Subd. 10. Recreational or tourist industry employment. (a) If an applicant has wage credits from recreational or tourist industry employment, benefits shall be available only if the applicant can establish a benefit account under section 268.07, subdivision 2, excluding the wage credits from recreational or tourist industry employment. This subdivision applies only to employment that is available with the employer for 15 consecutive weeks or less each calendar year.

(b) Wage credits from recreational or tourist industry employment may not be used for benefit purposes during weeks outside the normal employment season.

Subd. 11. Athletes and coaches. Benefits shall not be paid to an applicant on the basis of any wage credits from employment that consists of coaching or participating in sports or athletic events or training or preparing to participate for any week during the period between two successive sport seasons, or similar periods, if:

(1) the applicant was so employed in the prior season or similar period, and

(2) there is a reasonable assurance that the applicant will be so employed in the following season or similar period.

Subd. 12. Aliens. (a) An alien shall be ineligible for benefits for any week the alien is not authorized to work in the United States under federal law. Information from the Immigration and Naturalization Service shall be considered conclusive, absent specific evidence that the information was erroneous.

(b) Benefits shall not be paid on the basis of wage credits earned by an alien unless the alien (1) was lawfully admitted for permanent residence at the time of the employment, (2) was lawfully present for the purposes of the employment, or (3) was permanently residing in the United States under color of law at the time of the employment.

(c) Any information required of applicants applying for benefits to determine eligibility because of their alien status shall be required from all applicants.

Subd. 13. Suspension from employment. (a) An applicant who has been suspended from employment without pay for 30 calendar days or less, as a result of employment misconduct as defined under section 268.095, subdivision 6, shall be ineligible for benefits beginning the Sunday of the week that the applicant was suspended and continuing for the duration of the suspension.

(b) A suspension from employment without pay for more than 30 calendar days shall be considered a discharge from employment under section 268.095, subdivision 5.

(c) A suspension from employment with pay, regardless of duration, shall not be considered a separation from employment and the applicant shall be ineligible for benefits for the duration of the suspension with pay.

Subd. 14. **Able to work defined.** "Able to work" means an applicant has the physical and mental ability to perform the usual duties of the applicant's customary occupation or the usual duties of other suitable employment.

Subd. 15. **Available for employment defined.** (a) "Available for employment" means an applicant is ready and willing to accept employment in the labor market area. The attachment to the work force must be genuine. There must be no restrictions, either self-imposed or created by circumstances, temporary or permanent, that prevent accepting employment.

(b) To be considered "available for employment," a student must be willing to quit school to accept employment that would conflict with school attendance.

(c) An applicant who is absent from the labor market area for personal reasons, other than to search for work, is not "available for employment."

(d) An applicant who has restrictions on the hours of the day or days of the week that the applicant can or will work, that are not normal for the applicant's usual occupation or other employment, is not "available for employment." An applicant whose usual occupation is normally performed during the daytime must be available for daytime work even though the applicant customarily worked the night shift.

(e) An applicant must have transportation throughout the labor market area to be considered "available for employment."

Subd. 16. **Actively seeking suitable employment defined.** (a) "Actively seeking suitable employment" means those reasonable, diligent efforts an individual in similar circumstances would make if genuinely interested in obtaining suitable employment under the existing conditions in the labor market area. Limiting the search to positions that are not available or are above the applicant's training, experience, and qualifications is not "actively seeking suitable employment."

(b) To be considered "actively seeking suitable employment" an applicant shall, when reasonable, contact those employers from whom the applicant was laid off due to lack of work and request suitable employment.

(c) If reasonable prospects of suitable employment in the applicant's usual or customary occupation do not exist, the applicant must actively seek other suitable employment to be considered "actively seeking suitable employment." This applies to an applicant who is seasonally unemployed.

(d) An applicant who is seeking employment only through a union is not actively seeking suitable employment unless the applicant is in an occupation where it is required by union rule that all the hiring in that locality is done through the union. The applicant must be a union member in good standing, registered with the union for employment, and in compliance with other union rules to be considered "actively seeking suitable employment."

History: 1999 c 107 s 42,66

268.086 CONTINUED REQUEST FOR BENEFITS ON AN ACTIVE BENEFIT ACCOUNT.

Subdivision 1. **Active benefit account.** (a) A benefit account shall be considered active only when an applicant files continued requests for benefits in the manner and within the time periods prescribed. A benefit account shall be considered inactive if an applicant stops filing a continued request or fails to file a continued request within the time period required. The benefit account shall be considered inactive as of the Sunday following the last week or bi-weekly period for which a continued request has been timely filed.

(b) A benefit account that is inactive shall be reactivated the Sunday of the week that the applicant makes a contact with the department to do so, in the manner prescribed by the commissioner for reactivating that applicant's benefit account.

Subd. 2. **Continued request for benefits defined.** A continued request for benefits is a certification by an applicant, done on a weekly or biweekly basis as prescribed by the commissioner, on the applicant's eligibility for benefits under section 268.085 for a specific week

or two-week period. A continued request shall include information on possible issues of disqualification in accordance with section 268.101, subdivision 1, paragraph (c).

Subd. 3. Methods for filing continued requests for benefits. (a) The commissioner shall designate to each applicant one of the following methods for filing a continued request:

- (1) by telephone under subdivision 4;
- (2) by electronic transmission under subdivision 5;
- (3) by mail under subdivision 6; or
- (4) by in-person interview under subdivision 7.

(b) The method designated by the commissioner shall be the only method allowed for filing a continued request by that applicant. An applicant may ask that one of the other allowed methods be designated and the commissioner shall consider inconvenience to the applicant as well as administrative capacity in determining whether to allow an applicant to change the designated method for filing a continued request for benefits.

Subd. 4. Continued request for benefits by telephone. (a) A continued request by telephone shall be made to a telephone number required by the commissioner for that applicant. In order to constitute a continued request, all information asked for, including information authenticating that the caller is the applicant, must be provided. If all of the information asked for is not provided, the communication shall not constitute a continued request for benefits.

The telephone communication must be made on the date required for the applicant for filing a continued request for benefits by telephone.

(b) If the telephone continued request for benefits is not filed on the date required, a continued request by telephone shall be accepted if the applicant files the continued request by telephone within 14 days following the week in which the date required occurred. If the continued request by telephone is not filed within 14 days following the week in which the date required occurred, the telephone continued request shall not be accepted and the applicant shall be ineligible for benefits for the period covered by the continued request and the benefit account shall be considered inactive, unless the applicant shows good cause for failing to file the continued request by telephone within the time period requested.

Subd. 5. Continued request for benefits by electronic transmission. (a) A continued request for benefits by electronic transmission shall be filed to that electronic mail address or Internet address prescribed by the commissioner for that applicant. In order to constitute a continued request, all information asked for, including information authenticating that the applicant is sending the transmission, must be provided in the format required. If all of the information asked for is not provided, the communication shall not constitute a continued request for benefits.

The electronic transmission communication must be filed on the date required for the applicant for filing a continued request by electronic transmission.

(b) If the electronic transmission continued request is not filed on the date required, a continued request by electronic transmission shall be accepted if the applicant files the continued request by electronic transmission within 14 days following the week in which the date required occurred. If the continued request by electronic transmission is not filed within 14 days following the week in which the date required occurred, the electronic continued request shall not be accepted and the applicant shall be ineligible for benefits for the period covered by the continued request and the benefit account shall be considered inactive, unless the applicant shows good cause for failing to file the continued request by electronic transmission within the time period required.

Subd. 6. Continued request for benefits by mail. (a) A continued request for benefits by mail shall be on a form prescribed by the commissioner. The form, in order to constitute a continued request, must be totally completed and signed by the applicant.

The form must be filed on the date required for the applicant for filing a continued request by mail, in an envelope with postage prepaid thereon, and sent to the address required by the commissioner for that applicant.

(b) If the mail continued request for benefits is not filed on the date required, a continued request shall be accepted if the form is filed by mail within 14 days following the week in

which the date required occurred. If the form is not filed within 14 days following the week in which the date required occurred, the form shall not be accepted and the applicant shall be ineligible for benefits for the period covered by the continued request for benefits and the benefit account shall be considered inactive, unless the applicant shows good cause for failing to file the form by mail within the time period required.

(c) If the applicant has been designated to file a continued request for benefits by mail, an applicant may submit the form by facsimile transmission on the day otherwise required for mailing, or within 14 days following the week in which the date required occurred. A form submitted by facsimile transmission shall be sent only to the telephone number assigned for that purpose.

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

Subd. 7. In-person continued request for benefits. The commissioner may require any applicant who has been designated to make a continued request for benefits by mail, by telephone, by electronic transmission, or by mail to appear for a personal interview at a place, time, and date designated, during which a written continued request for benefits form shall be completed and submitted by the applicant.

An applicant shall be ineligible for benefits for the week or biweekly period covered by a continued request and the benefit account shall be considered inactive if the applicant fails, without good cause, to comply with the requirement that the applicant appear for a personal interview and at that time complete and submit a written continued request form.

Subd. 8. Good cause. A continued request for benefits that is not filed within the time periods required by this section shall be accepted only for those weeks that the applicant has "good cause" for not filing within the time periods required.

Subd. 9. Good cause defined. "Good cause" for purposes of this section is a compelling substantial reason that would have prevented a reasonable person acting with due diligence from filing a continued request for benefits within the time periods required.

"Good cause" shall not include forgetfulness, loss of the continued request form, having returned to work, or inability to file a continued request for benefits by the method designated if the applicant was aware of the inability and did not make diligent effort to have the method of filing a continued request changed by the commissioner. "Good cause" shall not include having previously made an attempt to file a continued request for benefits but where the communication was not considered a continued request because the applicant failed to submit all required information.

History: 1999 c 107 s 43,66

268.087 BENEFITS DUE DECEASED PERSONS.

If benefits are due and payable at the time of an applicant's death, those benefits may, upon application, be paid to the personal representative of the estate of the deceased. In the event that no personal representative is appointed, the benefits may, upon application be paid in the following order: (1) the surviving spouse, (2) the surviving child or children, or (3) the surviving parent or parents.

An individual seeking payment shall complete an application prescribed by the commissioner and the payment of benefits shall discharge the obligations to the applicant and no other individual shall claim or assert any right to those benefits.

History: 1999 c 107 s 66

268.095 DISQUALIFICATION PROVISIONS.

Subdivision 1. Quit. An applicant who quit employment shall be disqualified from all benefits except when:

- (1) the applicant quit the employment because of a good reason caused by the employer;
- (2) the applicant quit the employment to accept other covered employment that provided substantially better terms and conditions of employment, but the applicant did not work long enough at the other employment to have sufficient subsequent earnings to satisfy the disqualification that would otherwise be imposed;

(3) the applicant quit the employment within 30 calendar days of beginning the employment because the employment was unsuitable for the applicant;

(4) the employment was unsuitable for the applicant and the applicant quit to enter re-employment assistance training;

(5) the employment was part time and the applicant had full-time employment in the base period, that the applicant separated from because of nondisqualifying reasons, sufficient to meet the minimum requirements to establish a benefit account under section 268.07;

(6) the applicant quit because the employer notified the applicant that the applicant was going to be laid off due to lack of work within 30 calendar days. An applicant who quit employment within 30 calendar days of a notified date of layoff due to lack of work shall be disqualified from benefits through the end of the week that includes the scheduled date of layoff; or

(7) the applicant quit the employment because the applicant's serious illness or injury made it medically necessary that the applicant quit, provided that the applicant made reasonable efforts to remain in that employment in spite of the serious illness or injury.

Reasonable efforts to remain in that employment are those a reasonable individual would make if interested in remaining with the employer and require that the applicant inform the employer of the serious illness or injury and request accommodation.

If the applicant's serious illness is chemical dependency, the applicant has not made reasonable efforts to remain in that employment if the applicant has previously been diagnosed as chemically dependent, or has previously had treatment for chemical dependency, and has failed to make consistent efforts to control the chemical dependency.

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

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

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

Subd. 3. Good reason caused by the employer defined. (a) A good reason caused by the employer for quitting is a reason:

(1) that is directly related to the employment and for which the employer is responsible; and

(2) that is significant and would compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment.

(b) If an applicant was subjected to adverse working conditions by the employer, the applicant must complain to the employer and give the employer a reasonable opportunity to correct the adverse working conditions before that may be considered a good reason caused by the employer for quitting.

(c) A substantial adverse change in the wages, hours, or other terms of employment by the employer shall be considered a good reason caused by the employer for quitting unless the change occurred because of the applicant's employment misconduct.

(d) Notification of discharge in the future, including a layoff due to lack of work, shall not be considered a good reason caused by the employer for quitting.

(e) An applicant has a good reason caused by the employer for quitting if it results from sexual harassment of which the employer was aware, or should have been aware, and the employer failed to take timely and appropriate action. Sexual harassment means unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or other conduct or communication of a sexual nature when:

(1) the applicant's submission to the conduct or communication is made a term or condition of the employment;

(2) the applicant's submission to or rejection of the conduct or communication is the basis for decisions affecting employment; or

(3) the conduct or communication has the purpose or effect of substantially interfering with an applicant's work performance or creating an intimidating, hostile, or offensive working environment.

(f) The definition of a good reason caused by the employer for quitting employment provided by this subdivision shall be exclusive.

Subd. 4. **Discharge.** An applicant who was discharged from employment by an employer shall not be disqualified from any benefits except when:

- (1) the applicant was discharged because of employment misconduct; or
- (2) the applicant was discharged because of aggravated employment misconduct.

Subd. 4a. **Aggravated employment misconduct defined.** For the purpose of this section, "aggravated employment misconduct" means:

- (1) the commission of any act, on the job or off the job, that would amount to a gross misdemeanor or felony if the act interfered with or adversely affected the employment; or
- (2) for an employee of a facility as defined in section 626.5572, aggravated employment misconduct includes an act of patient or resident abuse, financial exploitation, or recurring or serious neglect, as defined in section 626.5572 and applicable rules.

If an applicant is convicted of a gross misdemeanor or felony for the same act for which the applicant was discharged, it is aggravated employment misconduct.

Subd. 5. **Discharge defined.** (a) A discharge from employment occurs when any words or actions by an employer would lead a reasonable employee to believe that the employer will no longer allow the employee to work for the employer in any capacity. A layoff due to lack of work shall be considered a discharge. A suspension from employment without pay of more than 30 calendar days shall be considered a discharge.

(b) An employee who gives notice of intention to quit the employment and is not allowed by the employer to work the entire notice period shall be considered discharged from the employment as of the date the employer will no longer allow the employee to work. If the discharge occurs within 30 calendar days prior to the intended date of quitting, then, as of the intended date of quitting, the separation from employment shall be considered a quit from employment subject to subdivision 1.

Subd. 6. **Employment misconduct defined.** (a) Employment misconduct means:

- (1) any intentional conduct, on the job or off the job, that disregards the standards of behavior that an employer has the right to expect of the employee or disregards the employee's duties and obligations to the employer; or
- (2) negligent or indifferent conduct, on the job or off the job, that demonstrates a substantial lack of concern for the employment.

(b) Inefficiency, inadvertence, simple unsatisfactory conduct, poor performance because of inability or incapacity, or absence because of illness or injury with proper notice to the employer, are not employment misconduct.

(c) Any conduct in violation of paragraph (a), clause (1) or (2), that was a result of the applicant's chemical dependency is employment misconduct if the applicant has previously been diagnosed chemically dependent or had treatment for chemical dependency, and has failed to make consistent efforts to control the chemical dependency.

(d) A driving offense in violation of section 169.121, 169.1211, or 169.123 that interferes with or adversely affects the employment is employment misconduct.

(e) The definition of employment misconduct provided by this subdivision shall be exclusive.

Subd. 7. **Act or omissions after separation.** Except as provided for under subdivision 8, an applicant shall not be disqualified from benefits under this section for any acts or omissions occurring after the applicant's separation from employment with the employer. A layoff due to lack of work is considered a separation from employment.

Subd. 8. **Offers of employment.** (a) An applicant shall be disqualified from all benefits if the applicant, without good cause:

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

- (2) failed to accept suitable employment when offered; or
- (3) avoided an offer of suitable employment.

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

- (1) the applicant is employed in other suitable employment;
- (2) the applicant is in reemployment assistance training;
- (3) the applicant formerly worked for the employer and the loss of employment occurred prior to the commencement of a labor dispute, was permanent or for an indefinite period, and the applicant failed to apply for or accept the employment because a labor dispute was in progress at the establishment; or
- (4) the applicant formerly worked for the employer and quit that employment because of a good reason caused by the employer.

Subd. 9. [Renumbered 268.035, subd. 23a]

Subd. 10. **Disqualification duration.** (a) A disqualification from the payment of all benefits under subdivisions 1, 4, and 8 shall be for the duration of the applicant's unemployment and until the end of the calendar week that the applicant had total earnings in subsequent covered employment of eight times the applicant's weekly benefit amount.

(b) Any disqualification imposed under subdivisions 1 and 4 shall begin on the Sunday of the week that the applicant became separated from employment. Any disqualification imposed under subdivision 8 shall begin on the Sunday of the week the applicant failed to apply for, accept, or avoided employment.

(c) In addition to paragraph (a), if the applicant was discharged from employment because of aggravated employment misconduct, wage credits from that employment shall be canceled.

Subd. 11. **Application.** This section shall apply to:

(1) all covered employment, full time or part time, temporary or of limited duration, permanent or of indefinite duration, that occurred during the base period, the period between the end of the base period and the effective date of the benefit account, or the benefit year, except as provided for in subdivision 1, clause (5); or

(2) all covered employment occurring in this state, and employment covered under a reemployment compensation program, (i) of any other state or (ii) established by an act of Congress.

Subd. 12. **Labor dispute.** (a) An applicant who has stopped working because of a labor dispute at the establishment where the applicant is employed shall be disqualified from benefits:

(1) until the end of the calendar week that the labor dispute was in active progress if the applicant is participating in or directly interested in the labor dispute; or

(2) until the end of the calendar week that the labor dispute began if the applicant is not participating in or directly interested in the labor dispute.

Participation includes any failure or refusal by an applicant, voluntarily or involuntarily, to accept and perform available and customary work at the establishment.

(b) An applicant who has stopped working because of a jurisdictional controversy between two or more labor organizations at the establishment where the applicant is employed shall be disqualified for benefits until the end of the calendar week that the jurisdictional controversy was in progress.

(c) An applicant shall not be disqualified from benefits under this subdivision if:

(1) the applicant stops working because of an employer's intentional 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 or state laws involving occupational safety and health;

(2) the applicant stops working because of a lockout; or

(3) the applicant is discharged prior to the beginning of a labor dispute.

(d) A quit from employment by the applicant during the time that the labor dispute is in active progress at the establishment shall not terminate the applicant's participation in or direct interest in the labor dispute for purposes of this subdivision.

(e) For the purpose of this subdivision, the term "labor dispute" shall have the same definition as provided in section 179.01, subdivision 7.

History: 1999 c 107 s 44,66

268.101 DETERMINATIONS ON DISQUALIFICATION AND ELIGIBILITY.

Subdivision 1. **Notification.** (a) In an application for benefits, each applicant shall report the names of all employers and the reasons for no longer working for all employers during the applicant's last 30 days of employment. If the reason reported for no longer working for any of those employers is other than a layoff due to lack of work, that shall raise an issue of disqualification that the department shall determine. An applicant's failure to report the name of an employer, or giving an incorrect reason for no longer working for an employer, shall be considered a violation of section 268.182, paragraph (b).

In an application, the applicant shall provide all information necessary to determine the applicant's eligibility for benefits under section 268.085.

(b) Upon establishment of a benefit account, the commissioner shall notify, by mail or electronic transmission, all employers the applicant was employed by during the applicant's last 30 days of employment prior to making an application and all base period employers and determined successors to those employers under section 268.051, subdivision 4. An employer shall have ten calendar days after the sending of the notice to raise, in a manner prescribed by the commissioner, any issue of disqualification or any issue of eligibility. An employer shall be informed of the effect that failure to raise an issue may have on the employer charges under section 268.047. An issue raised more than ten calendar days after sending of the notice shall be considered untimely.

(c) Each applicant shall report any employment, loss of employment, and offers of employment received, during those weeks the applicant filed continued requests for benefits pursuant to section 268.086. Each applicant who stops filing continued requests during the benefit year and later begins filing continued requests during that same benefit year shall report the name of any employer the applicant worked for during the period between the filing of continued requests, up to a period of the last 30 days of employment, and the reason the applicant stopped working for the employer. The applicant shall report any offers of employment during the period between the filing of continued requests for benefits. Those employers from which the applicant has reported a loss of employment or an offer of employment pursuant to this paragraph shall be notified by mail or electronic transmission. An employer shall have ten calendar days after the sending of the notice to raise, in a manner prescribed by the commissioner, any issue of disqualification or any issue of eligibility. An employer shall be informed of the effect that failure to raise an issue may have on the employer charges under section 268.047. An issue raised more than ten calendar days after sending of the notice shall be considered untimely.

(d) The purpose for requiring the applicant to report the name of all employers and the reason for no longer working for all employers during the applicant's "last 30 days of employment" under paragraphs (a) and (c) is for the commissioner to obtain information from an applicant raising all issues that may have the potential of disqualifying the applicant from benefits under section 268.095. If the reason given by the applicant for no longer working for an employer is other than a layoff due to lack of work, the applicant shall be required to state all the facts about the cause for no longer working for the employer, if known.

Subd. 2. **Disqualification determination.** (a) The commissioner shall determine any issue of disqualification timely raised by an employer, and mail to the applicant and that employer at the last known address a determination of disqualification or a determination of nondisqualification, as is appropriate. The determination shall state the effect on employer charges under section 268.047.

(b) The commissioner shall determine any issue of disqualification raised by information required from an applicant under subdivision 1, paragraph (a) or (c), and mail to the applicant and employer at the last known address a determination of disqualification or a deter-

mination of nondisqualification, as is appropriate. The determination shall state the effect on employer charges under section 268.047. A determination shall be made pursuant to this paragraph only on those issues involving the applicant's last 30 days of employment and shall be made even if a notified employer has not raised the issue of disqualification.

(c) The commissioner shall determine any untimely issue of disqualification raised by an employer and mail to the applicant and that employer at the last known address a determination of disqualification or a determination of nondisqualification as is appropriate. The determination shall state the effect on employer charges under section 268.047. If the employer did not employ the applicant during the applicant's last 30 days of employment prior to the applicant's application for benefits, but only employed the applicant for periods prior to that, any exception to employer charges under section 268.047, subdivisions 2 and 3, shall begin the Sunday two weeks following the week that the untimely issue was raised.

(d) If any time within 24 months from the establishment of a benefit account the commissioner finds that an applicant failed to report any employment, loss of employment, or offers of employment that were required to be provided by the applicant under this section, the commissioner shall determine any issue of disqualification on that loss of employment or offer of employment and mail to the applicant and involved employer at the last known address a determination of disqualification or a determination of nondisqualification, as is appropriate. The determination shall state the effect on employer charges under section 268.047.

This paragraph shall not prevent the imposition of any penalty under section 268.18, subdivision 2, or 268.182.

(e) An issue of disqualification shall be determined based upon that information required of an applicant, any information that may be obtained from an applicant or employer, and information from any other source, without regard to any common law burden of proof.

(f) A determination of disqualification or a determination of nondisqualification shall be final unless an appeal is filed by the applicant or notified employer within 30 calendar days after mailing. The determination shall contain a prominent statement indicating the consequences of not appealing. Proceedings on the appeal shall be conducted in accordance with section 268.105.

(g) An issue of disqualification for purposes of this section shall include any reason for no longer working for an employer other than a layoff due to lack of work, any question of a disqualification from benefits under section 268.095, any question of an exception to disqualification under section 268.095, any question of benefit charge to an employer under section 268.047, and any question of an otherwise imposed disqualification that an applicant has satisfied under section 268.095, subdivision 10.

(h) Regardless of the requirements of this subdivision, the commissioner is not required to mail to an applicant a determination where the applicant has satisfied any otherwise potential disqualification under section 268.095, subdivision 10.

Subd. 3. Eligibility determination. (a) The commissioner shall determine any issue of eligibility raised by an employer, whether timely or untimely, and mail to the applicant and that employer at the last known address a determination of eligibility or a determination of ineligibility, as is appropriate.

(b) The commissioner shall determine any issue of eligibility raised by information obtained from an applicant and mail to the applicant at the last known address a determination of eligibility or a determination of ineligibility, as is appropriate. A determination shall be made pursuant to this paragraph even if a notified employer has not raised the issue of eligibility.

(c) If any time within 24 months from the establishment of a benefit account the commissioner finds the applicant failed to provide, on an application for benefits or on a continued request for benefits, requested information on an issue of eligibility, the commissioner shall determine the issue of eligibility and mail to the applicant at the last known address a determination of eligibility or a determination of ineligibility, as is appropriate.

This paragraph shall not prevent the imposition of a penalty under section 268.18, subdivision 2, or 268.182.

(d) A determination of eligibility or determination of ineligibility shall be final unless an appeal is filed by the applicant or notified employer within 30 calendar days after mailing. The determination shall contain a prominent statement indicating the consequences of not appealing. Proceedings on the appeal shall be conducted in accordance with section 268.105.

(e) An issue of eligibility for purposes of this section shall include any question regarding the denial or allowing of benefits under sections 268.085, 268.086, 268.115, 268.125, 268.135, and 268.155.

(f) Only if an employer raised the issue of eligibility shall the employer be: (1) mailed the determination of eligibility or a determination of ineligibility, or (2) considered an involved employer for purposes of an appeal under section 268.105.

Subd. 3a. Direct hearing. Regardless of any provision of sections 268.03 to 268.23, the commissioner or a reemployment compensation judge may refer any issue of disqualification, any issue of eligibility, or any other issue under sections 268.035 to 268.23, directly for hearing in accordance with section 268.105, subdivision 1. The status of the issue shall be the same as if a determination had been made and an appeal filed.

Subd. 4. Amended determination. Unless an appeal has been filed, the commissioner, on the commissioner's own motion, may reconsider a determination of disqualification or nondisqualification or a determination of eligibility or ineligibility that has not become final and issue an amended determination. Any amended determination shall be mailed to the applicant and any involved employer at the last known address. Any amended determination shall be final unless an appeal is filed by the applicant or notified employer within 30 calendar days after mailing. Proceedings on the appeal shall be conducted in accordance with section 268.105.

Subd. 5. Benefit payment. If a determination or amended determination allows benefits to an applicant, the benefits shall be paid regardless of any appeal period or any appeal having been filed.

Subd. 6. Overpayment. A determination or amended determination that holds an applicant disqualified or ineligible for benefits for periods an applicant has been paid benefits is considered an overpayment of those benefits under section 268.18, subdivision 1.

Subd. 7. Employer information; absolute privilege. (a) Regardless of any provision of law to the contrary, an employer may provide the commissioner with information on an applicant so that the commissioner can determine an applicant's entitlement to benefits under sections 268.03 to 268.23.

(b) Information obtained pursuant to sections 268.03 to 268.23, in order to determine an applicant's entitlement to benefits, shall be absolutely privileged and shall not be made the subject matter or the basis for any civil proceeding, administrative, or judicial.

History: 1999 c 107 s 45,66

268.103 APPEALS BY TELEPHONE; ELECTRONIC TRANSMISSION.

[For text of subs 1 to 3, see M.S.1998]

Subd. 4. Protests by telephone and electronic transmission. This section shall apply to the filing of protests to those determinations and notices that require a protest and affirmation procedure prior to an appeal.

History: 1999 c 107 s 46

268.105 HEARINGS; APPEALS.

Subdivision 1. Hearing. (a) Upon appeal the department shall set a time and place for a de novo evidentiary hearing and mail notice to any involved applicant and any involved employer not less than ten calendar days prior to the date of the hearing.

(b) The evidentiary hearing shall be conducted by a reemployment compensation judge without regard to any common law burden of proof as an evidence gathering inquiry and not an adversarial proceeding. The commissioner shall adopt rules on evidentiary hearings. The rules need not conform to common law or statutory rules of evidence and other technical rules of procedure. A report of any employee of the department, except a determination,

made in the regular course of the employee's duties, shall be competent evidence of the facts contained in it.

(c) After the conclusion of the hearing, upon the evidence obtained, the reemployment compensation judge shall make written findings of fact and decision and mail those to all involved parties. The reemployment compensation judge's decision is the final department decision unless a further appeal is filed pursuant to subdivision 2.

(d) The commissioner shall designate classified employees of the department as reemployment compensation judges to conduct evidentiary hearings on appeals. The commissioner or authorized representative may personally hear or transfer to another reemployment compensation judge any proceedings pending before a reemployment compensation judge. Any proceedings removed to the commissioner or authorized representative shall be heard in accordance with this subdivision.

Subd. 2. [Renumbered subdivision 1, paragraph (d)]

Subd. 2. **Commissioner review.** (a) Within 30 calendar days after mailing of the reemployment compensation judge's decision, any involved applicant or involved employer may appeal and obtain a de novo review by the commissioner or an authorized representative. The commissioner within the same period of time may on the commissioner's own motion order a de novo review.

(b) The authorized representative of the commissioner shall be an attorney who is a classified employee of the department. The authority to act on behalf of the commissioner under this section shall be by specific written delegation filed with the secretary of state.

(c) Upon de novo review, the commissioner shall, on the basis of that evidence submitted at the hearing under subdivision 1, make findings of fact and decision, or remand the matter back to a reemployment compensation judge for the taking of additional evidence and the making of new findings and decision based on all the evidence. The commissioner shall, independent of the findings of fact and decision of the reemployment compensation judge, examine the evidence and make those findings of fact as the evidence, in the judgment of the commissioner require, and make that decision as the facts found by the commissioner require.

(d) The commissioner may conduct a de novo review without argument by any involved party, or the commissioner may allow written argument. The commissioner shall not, except for purposes of deciding whether to remand a matter to a reemployment compensation judge for a further evidentiary hearing, consider any evidence that was not submitted at the hearing before the reemployment compensation judge.

(e) The commissioner shall mail to any involved party the commissioner's findings of fact and decision. The decision of the commissioner is the final department decision. Unless judicial review is sought under subdivision 7, the decision of the commissioner shall become final 30 calendar days after mailing.

Subd. 3. [Renumbered subdivision 2]

Subd. 3. **Withdrawal of appeal.** (a) Any appeal that is pending a decision before a reemployment compensation judge or the commissioner may be withdrawn by the appealing person, or an authorized representative of that person, upon filing of a notice of withdrawal.

(b) The appeal shall, by written order, be dismissed if a notice of withdrawal is filed, unless the commissioner, by written order, directs that further adjudication is required for a proper result.

(c) A notice of withdrawal may be filed by mail, by telephone, or if the commissioner allows, by electronic transmission.

Subd. 3a. **Decisions.** (a) If a reemployment compensation judge's decision or the commissioner's decision allows benefits to an applicant, the benefits shall be paid regardless of any appeal period or any appeal having been filed.

(b) If a reemployment compensation judge's decision modifies or reverses a determination allowing benefits to an applicant, any benefits paid pursuant to the determination is considered an overpayment of those benefits under section 268.18, subdivision 1.

(c) If a commissioner's decision modifies or reverses a reemployment compensation judge's decision allowing benefits to an applicant, any benefits paid pursuant to the reem-

ployment compensation judge's decision is considered an overpayment of those benefits under section 268.18, subdivision 1.

(d) If the commissioner affirms a reemployment compensation judge's decision on an issue of disqualification that allows benefits to an applicant, the commissioner's decision, if finally reversed by the Minnesota Court of Appeals or the Supreme Court of Minnesota, shall not result in a disqualification of the applicant from benefits under section 268.095.

(e) If the commissioner, pursuant to subdivision 2, remands a matter to a reemployment compensation judge for the taking of additional evidence, the prior reemployment compensation judge's decision shall continue to be enforced until new findings of fact and decision are made by a reemployment compensation judge.

Subd. 4. Testimonial powers. The reemployment compensation judge, the commissioner, or authorized representative, may administer oaths and affirmations, take depositions, and issue subpoenas to compel the attendance of witnesses and the production of documents and other personal property considered necessary as evidence in connection with the subject matter of an evidentiary hearing. The subpoenas shall be enforceable through the district court in the district that the subpoena is issued. Witnesses subpoenaed, other than an involved applicant or involved employer or officers and employees of an involved employer, shall be paid by the commissioner the same witness fees as in a civil action in district court.

Subd. 5. Use of information. (a) All testimony at any evidentiary hearing conducted pursuant to subdivision 1 shall be recorded. A copy of any recorded testimony and exhibits received into evidence at the hearing shall, upon request, or upon directive of the commissioner, be furnished to a party at no cost during the time period for filing an appeal to the commissioner or while such an appeal is pending. If requested, the commissioner shall make available a device for listening to the recording if an appeal is pending before the commissioner under subdivision 2.

(b) Regardless of any provision of law to the contrary, if recorded testimony and exhibits received into evidence at the evidentiary hearing are not requested during the time period for filing an appeal to the commissioner, or while such an appeal is pending, that testimony and other evidence shall later be made available to an involved party only pursuant to a court order. A subpoena shall not be considered a court order.

(c) Testimony obtained under subdivision 1, may not be used or considered for any purpose, including impeachment, in any civil, administrative, or contractual proceeding, except by a local, state, or federal human rights agency with enforcement powers, unless the proceeding is initiated by the department.

(d) No findings of fact or decision issued by a reemployment compensation judge or the commissioner may be held conclusive or binding or used as evidence in any separate or subsequent action in any other forum, except proceedings provided for under this chapter, regardless of whether the action involves the same or related parties or involves the same facts.

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

(b) Except for services provided by an attorney-at-law, an applicant shall not be charged fees, costs, or disbursements of any kind in a proceeding before a reemployment compensation judge, the commissioner, the Minnesota court of appeals, or supreme court of Minnesota.

Subd. 7. Judicial review. (a) The Minnesota court of appeals shall, by writ of certiorari to the commissioner, review the decision of the commissioner provided a petition for the writ is filed with the court and a copy is served upon the commissioner and any other involved party within 30 calendar days of the mailing of the commissioner's decision.

(b) Any employer petitioning for a writ of certiorari shall pay to the court the required filing fee and upon the service of the writ shall furnish a cost bond to the commissioner in accordance with the rules of civil appellate procedure. If the employer requests a written transcript of the testimony received at the evidentiary hearing conducted pursuant to subdivision 1, the employer shall pay to the commissioner the cost of preparing the transcript.

(c) Upon issuance by the Minnesota court of appeals of a writ of certiorari as a result of an applicant's petition, the commissioner shall furnish to the applicant at no cost a written transcript of the testimony received at the evidentiary hearing conducted pursuant to subdivi-

sion 1, and, if requested, a copy of all exhibits entered into evidence. No filing fee or cost bond shall be required of an applicant petitioning the Minnesota court of appeals for a writ of certiorari.

(d) The commissioner shall be considered the primary responding party to any judicial action involving the commissioner's decision and the case title shall be, "In Re the matter of: (named petitioner) and the commissioner of economic security." The commissioner may be represented by an attorney who is a classified employee of the department designated by the commissioner for that purpose.

History: 1999 c 107 s 47,66

268.115 EXTENDED BENEFITS.

Subdivision 1. **Definitions.** The terms used in this section shall have the following meaning:

(1) "Extended benefit period" means a period that lasts for a minimum of 13 weeks and that:

- (i) Begins with the third week after there is a state "on" indicator; and
- (ii) Ends with the third week after there is a state "off" indicator.

No extended benefit period may begin before the 14th week following the end of a prior extended benefit period.

(2) There is a "state 'on' indicator" for a week if:

(i) for that week and the prior 12 weeks, the rate of insured unemployment:

(a) equaled or exceeded 120 percent of the average of the rates for the corresponding 13-week period ending in each of the prior two calendar years, and was five percent or more; or

(b) equaled or exceeded six percent; or

(ii) The United States Secretary of Labor determines that the average rate of seasonally adjusted total unemployment in Minnesota for the most recent three months for which data is published equals or exceeds 6.5 percent and this rate equals or exceeds 110 percent of the rate of the corresponding three-month period in either of the prior two calendar years.

(3) There is a "state 'off' indicator" for a week if:

(i) under clause (2)(i), for that week and the prior 12 weeks, the requirements for a "state 'on' indicator" are not satisfied; or

(ii) under clause (2)(ii) the requirements for a "state 'on' indicator" are not satisfied.

(4) "Rate of insured unemployment," means the percentage derived by dividing the average weekly number of applicants filing continued requests for regular benefits in the most recent 13-week period by the average monthly covered employment for the first four of the last six completed calendar quarters before the end of that 13-week period.

(5) "Regular benefits" means benefits available to an applicant other than extended benefits and additional benefits.

(6) "Eligibility period" for an applicant means the period consisting of the weeks remaining in the applicant's benefit year within the extended benefit period and, if the benefit year ends within the extended benefit period, any weeks in the extended benefit period.

(7) "Exhaustee" means an applicant who, in the eligibility period:

(a) the benefit year having not expired has received the maximum amount of regular benefits that were available under section 268.07;

(b) the benefit year having expired, has insufficient wage credits to establish a new benefit account; and

(c) has no right to any type of reemployment compensation benefits under the law of any other state or under federal laws and is not receiving reemployment compensation benefits under the law of Canada.

Subd. 2. [Repealed by amendment, 1999 c 107 s 48]

Subd. 3. **Requirements for extended benefits.** If an extended benefit period is in effect, an applicant shall be paid extended benefits from the fund for any week in the applicant's eligibility period if the applicant:

- (1) is an "exhaustee";
- (2) has satisfied the same requirements as those for regular benefits under section 268.069;
- (3) has wage credits of not less than 40 times the weekly benefit amount; and
- (4) is not subject to a denial of extended benefits under subdivision 9.

Subd. 4. **Weekly extended benefit amount.** The weekly extended benefit amount shall be the same as the weekly benefit amount of regular benefits.

Subd. 5. **Maximum amount of extended benefits.** The maximum amount of extended benefits available to an applicant shall be 50 percent of the maximum amount of regular benefits available in the benefit year. If the total rate of unemployment computed under subdivision 1, clause (2)(ii), equaled or exceeded eight percent, the maximum amount of extended benefits available shall be 80 percent of the maximum amount of regular benefits available in the benefit year.

Subd. 6. **Public announcement.** Whenever an extended benefit period is to begin as a result of a state "on" indicator, or an extended benefit period is to end as a result of a state "off" indicator the commissioner shall make an appropriate public announcement.

Subd. 7. **Federal law.** This section is enacted to conform to the requirements of United States Code, title 26, section 3304, the Federal-State Extended Unemployment Compensation Act of 1970 as amended and the applicable federal regulations.

Subd. 8. **Interstate applicants.** An applicant residing in a state other than Minnesota shall be eligible for only the first two weeks of extended benefits if the applicant's benefit account was established pursuant to the interstate benefit payment plan and no extended benefit period is in effect for the week in that state.

Subd. 9. **Denial provisions.** (a) An applicant shall be denied extended benefits for any week in the applicant's eligibility period if during that week the applicant failed to accept any offer of suitable employment, failed to apply for any suitable employment that the applicant was referred to by the commissioner, or failed to actively seek suitable employment.

The denial shall continue until the applicant has been employed in covered employment in each of four subsequent weeks, whether or not consecutive, and had earnings from that covered employment of not less than four times the applicant's weekly benefit amount.

(b) For the purpose of this subdivision "suitable employment" means any employment that is within the applicant's capabilities and that has a gross average weekly wage that exceeds the applicant's weekly benefit amount. The employment must pay wages not less than the higher of the federal minimum wage without regard to any exemption, or the applicable state minimum wage.

(c) No applicant shall be denied extended benefits for failure to accept an offer of or apply for any suitable employment if:

- (1) the position was not offered to the applicant in writing;
- (2) the position was not listed with the job service; or
- (3) the applicant furnishes satisfactory evidence that prospects for obtaining employment in the applicant's customary occupation within a reasonably short period are good. If the evidence is satisfactory, the determination of whether any employment is suitable shall be made in accordance with the definition of suitable employment in section 268.035, subdivision 23a.

(d) For the purpose of this subdivision an applicant is "actively seeking suitable employment" only if the applicant has engaged in a systematic and sustained effort to obtain employment, and the applicant furnishes tangible evidence of that effort.

Subd. 10. **Job service referral.** The job service shall refer any applicant who is filing continued requests for extended benefits to any employment that is suitable under subdivision 9.

History: 1999 c 107 s 48,66

268.125 ADDITIONAL REEMPLOYMENT COMPENSATION BENEFITS.

Subdivision 1. **Additional benefits; when available.** Additional benefits are available if:

(1) at a facility that had 100 or more employees, the employer reduced operations, resulting within a one-month period in the layoff of 50 percent or more of the facility's work force, including reductions caused as a result of a major natural disaster declared by the president;

(2) the employer has no expressed plan to resume operations that would lead to the re-employment of those employees in the immediate future; and

(3) the seasonally adjusted unemployment rate in the county that the facility is located was ten percent or more during the month of the reduction or any of the three months before or after the month of the reduction.

[For text of subd 2, see M.S.1998]

Subd. 3. **Eligibility conditions.** An applicant is eligible to receive additional benefits for any week during the applicant's benefit year if:

(1) the applicant was laid off from employment as a result of a reduction under subdivision 1 or was laid off due to lack of work from that employer during the three-month period before, or the three-month period after, the month of the reduction under subdivision 1;

(2) the applicant meets the eligibility requirements under section 268.085;

(3) the applicant is not subject to a disqualification under section 268.095; for the purpose of this subdivision, the disqualifying conditions in section 268.095, and the requalifying requirements, apply to the receipt of additional benefits;

(4) the applicant has exhausted regular benefits under section 268.07, is not entitled to receive extended benefits under section 268.115, and is not entitled to receive benefits under any other state or federal law for that week;

(5) a majority of the applicant's wage credits were from the employer that had a reduction in operations under subdivision 1.

Subd. 4. **Weekly benefit amount.** An applicant's weekly additional benefit amount shall be the same as the applicant's weekly benefit amount during the current benefit year under section 268.07.

Subd. 5. **Maximum amount of benefits.** The maximum amount of additional benefits available in the applicant's benefit year shall be one-half of the applicant's maximum amount of regular benefits available under section 268.07, subdivision 2. Extended benefits paid and benefits paid under any federal law other than regular benefits shall be deducted from the maximum amount of additional benefits available.

History: 1999 c 107 s 49-51,66

268.131 RECIPROCAL BENEFIT ARRANGEMENTS.

Subdivision 1. (a) The commissioner shall participate in reciprocal arrangements with other states and the federal government, or both, for the payment of benefits on the basis of combining an applicant's wages and employment covered under this law with wages and employment covered under the reemployment compensation laws of other states or the federal government that include provisions for applying the base period of a single state law to an account involving the combining of an applicant's wages and employment and avoiding the duplicate use of wages by reason of such combining. No reciprocal arrangement shall be entered into unless it contains provisions for reimbursements to the fund, by the other state or the federal government, for benefits paid from the fund to applicants based upon wages and employment covered under the laws of the other state or the federal government.

(b) On any reciprocal arrangement, the wages paid an applicant from employment covered under a reemployment compensation law of another state or of the federal government, shall be considered wages from covered employment for the purpose of determining the applicant's rights to benefits under sections 268.03 to 268.23.

Subd. 2. **Cooperation with foreign governments.** The commissioner is authorized to enter into or cooperate in arrangements whereby facilities and services provided under sec-

tions 268.03 to 268.23 and facilities and services provided under the reemployment compensation law of any foreign government, may be used for the taking of applications for benefits and continued claims and the payment of benefits under this law or under a similar law of a foreign government.

History: 1999 c 107 s 66

268.135 SHARED WORK PLAN.

Subdivision 1. **Definitions.** For purposes of this section:

(1) "Affected employee" means an employee who was continuously employed as a member of the affected group, for at least six months, on a full-time basis, prior to submission of the shared work plan.

(2) "Affected group" means five or more employees designated by the employer to participate in a shared work plan.

(3) "Shared work plan" or "plan" means an employer's written plan under which a group of employees whose normal weekly hours of work are reduced, in order to prevent employees from being laid off due to lack of work.

(4) "Normal weekly hours of work" means the number of hours in a week that the employee normally would work for the shared work employer or 40 hours, whichever is less.

Subd. 2. **Participation.** (a) An employer wishing to participate in the shared work benefit program shall submit a written shared work plan to the commissioner for approval. The commissioner may approve a shared work plan only if it:

(1) specifies the employees in the affected group;

(2) applies to only one affected group;

(3) includes a certified statement by the employer that each employee specified in the affected group is an affected employee;

(4) includes a certified statement by the employer that for the duration of the plan the reduction in normal weekly hours of work of the employees in the affected group is instead of layoffs that otherwise would result in at least as large a reduction in the total normal weekly hours of work;

(5) specifies an expiration date that is no more than one year from the date the employer submits the plan for approval;

(6) specifies that fringe benefits, such as health and retirement, available to the employees in the affected group are not reduced beyond the percentage of reduction in hours of work; and

(7) is approved in writing by the collective bargaining agent for each collective bargaining agreement that covers any employee in the affected group.

(b) The commissioner shall set the beginning and ending dates of an approved shared work plan.

(c) The commissioner shall mail to the employer a written determination approving or disapproving the plan within 15 calendar days of its receipt. Determinations are final.

(d) Disapproval of a plan may be reconsidered at the discretion of the commissioner. Approval of a shared work plan may be revoked if the approval was based, in whole or in part, upon information that was false or misleading.

Subd. 3. **Eligibility.** (a) Regardless of any other provision, an applicant is eligible to receive shared work benefits with respect to any week if:

(1) during the week the applicant is employed as a member of an affected group in a plan that was approved prior to the week and is in effect for the week; and

(2) during the week the normal weekly hours of work were reduced, in accordance with the plan, at least 20 percent but not more than 40 percent, with a corresponding reduction in wages.

(b) Shared work benefits shall not be paid to an applicant beyond one benefit year.

(c) The total amount of regular benefits and shared work benefits paid to an applicant in a benefit year shall not exceed the maximum amount of regular benefits available.

(d) An otherwise eligible applicant shall not be denied shared work benefits because of the application of any provision relating to availability for employment, active search for employment, or refusal to apply for or accept suitable employment from other than the applicant's shared work employer.

Subd. 4. **Weekly benefit amount.** (a) An applicant who is eligible for shared work benefits shall be paid an amount equal to the regular weekly benefit amount multiplied by the nearest full percentage of reduction of the applicant's regular weekly hours of work as set in the plan. The benefit payment, if not a whole dollar shall be rounded to the next lower dollar.

(b) The deductible earnings provisions of section 268.085, subdivision 5, shall not apply to earnings from the shared work employer of an applicant eligible for shared work benefits unless the resulting amount would be less than the regular weekly benefit amount the applicant would otherwise be eligible for without regard to shared work benefits.

(c) An applicant shall not be eligible for shared work benefits for any week that employment is performed for the shared work employer in excess of the reduced hours set forth in the plan.

History: 1999 c 107 s 52,66

268.145 INCOME TAX WITHHOLDING.

Subdivision 1. **Notification.** (a) Upon filing an application for benefits, the applicant shall be informed that:

- (1) benefits are subject to federal and state income tax;
- (2) there are requirements for filing estimated tax payments;
- (3) the applicant may elect to have federal income tax withheld from benefits;
- (4) if the applicant elects to have federal income tax withheld, the applicant may, in addition, elect to have Minnesota state income tax withheld; and
- (5) at any time during the benefit year the applicant may change a prior election.

(b) If an applicant elects to have federal income tax withheld, the commissioner shall deduct 15 percent for federal income tax, rounded to the nearest whole dollar. If an applicant also elects to have Minnesota state income tax withheld, the commissioner shall make an additional five percent deduction for state income tax. Any amounts deducted or offset pursuant to sections 268.155, 268.156, 268.18, and 268.184 have priority over any amounts deducted under this section. Federal income tax withholding has priority over state income tax withholding.

(c) An election to have income tax withheld shall not be retroactive and shall only apply to benefits paid after the election.

Subd. 2. **Transfer of funds.** The amount of any benefits deducted under this section shall remain in the fund until transferred to the federal Internal Revenue Service, or the department of revenue, as an income tax payment on behalf of the applicant.

Subd. 3. **Correction of errors.** Any error that resulted in underwithholding or overwithholding under this section shall not be corrected retroactively.

Subd. 4. **Federal requirement.** The commissioner shall follow all federal requirements for the deduction and withholding of income tax from benefits.

Subd. 5. **Effect of payments.** Any amount deducted under this section shall be considered as benefits paid to the applicant.

History: 1999 c 107 s 53,66

268.155 CHILD SUPPORT DEDUCTED FROM BENEFITS.

Subdivision 1. **Definitions.** As used in this section:

(1) "Child support obligations" means obligations that are being enforced by a child support agency pursuant to a plan described in United States Code, title 42, section 454, of the Social Security Act that has been approved by the secretary of health and human services under part D of title IV of the Social Security Act. This shall not include any type of spousal maintenance or foster care payments; and

(2) "Child support agency" means the public agency responsible for child support enforcement.

Subd. 2. **Notice upon application.** In an application for benefits, the applicant shall disclose if child support obligations are owed and, if so, in what state and county. If child support obligations are owed, the commissioner shall, if the applicant establishes a benefit account, notify the child support agency.

Subd. 3. **Withholding of benefits.** The commissioner shall deduct and withhold from any benefits payable to an applicant who owes child support obligations:

(1) the amount required pursuant to a proper order of a court or administrative agency; or

(2) if clause (1) is not applicable, the amount determined pursuant to an agreement under United States Code, title 42, section 454 (20) (B) (i), of the Social Security Act; or

(3) if clause (1) or (2) is not applicable, the amount specified by the applicant.

Subd. 4. **Payment.** Any amount deducted and withheld shall be paid to the child support agency, but shall for all purposes be treated as if it were paid to the applicant as benefits and paid by the applicant to the child support agency in satisfaction of the applicant's child support obligations.

Subd. 5. [Renumbered as part of subdivision 4]

Subd. 5. **Payment of costs.** The child support agency shall pay the costs incurred by the commissioner in the implementation and administration of this section and sections 518.551 and 518.6111.

Subd. 6. [Renumbered subdivision 5]

History: 1999 c 107 s 54,66

268.18 BENEFIT OVERPAYMENTS.

Subdivision 1. **Overpayment due to error.** (a) Any applicant who (1) by reason of the applicant's own mistake, or (2) because of an error by any employee of the department, or (3) because of a determination, redetermination, or amended determination issued pursuant to section 268.07 or 268.101, or (4) because of an appeal decision under section 268.105, has received any benefits that the applicant was not entitled to, shall promptly repay the benefits to the fund. If the applicant fails to repay the benefits, the commissioner shall, as soon as the erroneous payment is discovered, determine the amount due and notify the applicant in writing to repay the benefits.

(b) Unless the applicant files an appeal within 30 calendar days after the mailing of the determination of overpayment to the applicant's last known address, the determination shall become final. Proceedings on the appeal shall be conducted in accordance with section 268.105. An applicant may not collaterally attack, by way of an appeal to an overpayment determination, any prior determination issued pursuant to section 268.07 or 268.101, or decision issued pursuant to section 268.105, that has become final.

(c) If the applicant fails to repay the benefits, the commissioner may offset from any future benefits otherwise payable the amount of the overpayment. Except when the overpayment resulted because the applicant failed to report deductible earnings or deductible payments, no single offset shall exceed 50 percent of the amount of the payment from which the offset is made. The overpayment may also be collected by the same methods as delinquent taxes. A determination of overpayment shall state the methods of collection the commissioner may use to recover the overpayment.

(d) If an applicant has been overpaid benefits under the law of another state because of an error and that state certifies that the applicant is liable under its law to repay the benefits and requests the commissioner to recover the overpayment, the commissioner may offset from future benefits otherwise payable the amount of overpayment, except that no single offset shall exceed 50 percent of the amount of the payment from which the offset is made.

(e) Benefits paid for weeks more than three years prior to the discovery of error are not overpaid benefits.

Subd. 2. **Overpayment due to fraud.** (a) Any applicant who receives benefits by intentionally misrepresenting, misstating, or failing to disclose any material fact has committed fraud. After the discovery of facts indicating fraud, the commissioner shall make a written determination that the applicant obtained benefits by fraud and that the applicant must

promptly repay the benefits to the fund. In addition, the commissioner shall assess a penalty equal to 25 percent of the amount fraudulently obtained. If the applicant had a prior overpayment due to fraud, the commissioner shall, on the present overpayment, assess a penalty equal to 50 percent of the amount fraudulently obtained.

(b) Unless the applicant files an appeal within 30 calendar days after the mailing of the determination of overpayment by fraud to the applicant's last known address, the determination shall become final. Proceedings on the appeal shall be conducted in accordance with section 268.105.

(c) If the applicant fails to repay the benefits, penalty, and interest assessed, the commissioner shall offset from future benefits otherwise payable the amount of overpayment. The total due may also be collected by the same methods as delinquent taxes. A determination of overpayment by fraud shall state the methods of collection the commissioner may use to recover the overpayment. Money received in repayment of fraudulently obtained benefits, penalties, and interest shall first be applied to the benefits overpaid, then to the penalty amount due, then to any interest due. Payments made toward penalty and interest shall be credited to the contingent account.

(d) If an applicant has been overpaid benefits under the law of another state because of fraud and that state certifies that the applicant is liable to repay the benefits and requests the commissioner to recover the overpayment, the commissioner may offset from future benefits otherwise payable the amount of overpayment.

(e) A determination of overpayment by fraud may be made at any time.

Subd. 2b. Interest. (a) Beginning January 1, 2002, on any benefits fraudulently obtained, and any penalty amounts assessed under subdivision 2, the commissioner shall assess interest at the rate of 1-1/2 percent per month on any amount that remains unpaid 30 calendar days after the date of the determination of overpayment by fraud. A determination of overpayment by fraud shall state that interest shall be assessed.

(b) If this subdivision became effective after the date of the determination, or the determination did not state that interest shall be assessed, interest shall be assessed beginning 30 calendar days after written notification to the applicant.

Subd. 3a. Offset of federal benefits. The commissioner is authorized to enter into reciprocal agreements with the United States Secretary of Labor, whereby, overpayments of benefits as determined under federal law, may be recovered by offset from benefits otherwise payable and benefit overpayments under subdivisions 1 and 2 may be recovered by offset from benefits otherwise payable under a federal program.

Subd. 4. Cancellation of overpayments. (a) If benefits paid because of an error are not repaid or offset from subsequent benefits as provided for in subdivision 1 within six years after the date of the determination of overpayment, the commissioner shall cancel the overpayment balance, and no administrative or legal proceedings shall be used to enforce collection of those amounts.

(b) If benefits paid as a result of fraud including penalties and interest are not repaid or offset from subsequent benefits as provided for in subdivision 2 within ten years after the date of the determination of overpayment by fraud, the commissioner shall cancel the overpayment balance and any penalties and interest due, and no administrative or legal proceeding shall be used to enforce collection of those amounts.

(c) The commissioner may cancel at any time any overpayment, including penalties and interest, that the commissioner determines is uncollectible due to death or bankruptcy.

Subd. 4a. Court fees. (a) If the commissioner is required to pay any court fees in an attempt to enforce collection of overpaid benefits, penalties, or interest, the commissioner may add the amount of the court fees to the total amount due.

(b) If an applicant who has been determined overpaid benefits because of fraud seeks to have any portion of the debt discharged under the federal bankruptcy code, and the commissioner files an objection in bankruptcy court to the discharge, the commissioner may add the commissioner's cost of any court fees to the debt if the bankruptcy court does not discharge the debt.

Subd. 5. **Remedies.** (a) Any method undertaken to recover an overpayment of benefits, including any penalties and interest, shall not be considered an election of a method of recovery.

(b) Intervention or lack thereof, in whole or in part, in a workers' compensation matter under section 176.361 shall not be considered an election of a remedy and shall not prevent the commissioner from determining any benefits overpaid under subdivision 1 or 2 or taking action under section 268.182.

Subd. 6. **Collection of overpayments.** (a) The commissioner may not compromise the amount that has been determined overpaid under this section including penalties and interest.

(b) The commissioner shall have discretion regarding the use of any method of recovery of any overpayment under subdivision 1. Regardless of any law to the contrary, the commissioner shall not be required to refer any amount determined overpaid under subdivision 1 to a public or private collection agency, including agencies of this state.

(c) Amounts determined overpaid under subdivision 1 shall not be considered a "debt" to the state of Minnesota for purposes of any reporting requirements to the commissioner of finance.

(d) A pending appeal under section 268.105 shall not toll the assessment of interest, penalties, or collection of an overpayment under this section.

History: 1999 c 107 s 55,66

268.182 FALSE REPRESENTATIONS; CONCEALMENT OF FACTS; PENALTY.

(a) Whoever obtains, or attempts to obtain, or aids or abets any individual to obtain by means of an intentional false statement or representation, by intentional concealment of a material fact, or by impersonation or other fraudulent means, benefits that the individual is not entitled or benefits greater than the individual is entitled under this chapter, or under the law of any state or of the federal government, either personally or for any other individual, is guilty of theft and shall be sentenced pursuant to section 609.52.

(b) Any individual who intentionally makes a false statement or representation, who intentionally fails to disclose a material fact, or who makes a false statement or representation without a good faith belief as to the correctness of the statement or representation, in order to obtain or in an attempt to obtain benefits may be assessed an administrative penalty of denial of benefits for one to 52 weeks that the individual would otherwise be entitled to benefits. A denial shall not apply to any week more than two years after the week that the penalty was determined. A written determination of denial shall be mailed to the individual's last known address. Unless an appeal is filed within 30 calendar days of mailing, the determination shall be final. Proceeding on the appeal shall be conducted in accordance with section 268.105.

(c) [Renumbered 268.184, paragraph (e)]

History: 1999 c 107 s 56,66

268.184 EMPLOYER MISCONDUCT; PENALTY.

(a) If the commissioner finds that any employer or any employee, officer, or agent of any employer, is in collusion with any applicant for the purpose of assisting the applicant to receive benefits illegally, the employer shall be penalized \$500 or the amount of benefits determined to be overpaid, whichever is greater.

(b) If the commissioner finds that any employer or any employee, officer, or agent of an employer has made (1) a false statement or representation knowing it to be false, or (2) has made a false statement or representation without a good faith belief as to correctness of the statement or representation, or (3) who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any applicant or to reduce or prevent a charge of benefits to its account, the employer shall be penalized \$500.

(c) Penalties under this section shall be in addition to any other penalties and subject to the same collection procedures that apply to past due taxes. Penalties shall be paid to the department within 30 calendar days of assessment and credited to the contingent account.

(d) The assessment of the penalty shall be final unless the employer files an appeal within 30 calendar days after the sending of notice of the penalty to the employer by mail or elec-

tronic transmission. Proceedings on the appeal shall be conducted in accordance with section 268.105.

(e) Any employer or any officer or agent of an employer or any other individual 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 applicant, is guilty of a gross misdemeanor unless the benefit underpayment exceeds \$500, in that case the individual is guilty of a felony.

History: 1999 c 107 s 56,66

268.186 RECORDS.

(a) Each employer shall keep true and accurate records for the periods of time and containing the information the commissioner may require. For the purpose of administering this chapter, the commissioner has the power to examine, or cause to be supplied or copied, any books, correspondence, papers, records, or memoranda that are relevant, whether the books, correspondence, papers, records, or memoranda are the property of or in the possession of the employer or any other person at any reasonable time and as often as may be necessary.

(b) The commissioner may make summaries, compilations, photographs, duplications, or reproductions of any records, or reports that the commissioner considers advisable for the preservation of the information contained therein. Any summaries, compilations, photographs, duplications, or reproductions shall be admissible in any proceeding under this chapter. Regardless of any restrictions contained in section 16B.50, the commissioner may duplicate records, reports, summaries, compilations, instructions, determinations, or any other written or recorded matter pertaining to the administration of this chapter.

(c) Regardless of any law to the contrary, the commissioner may provide for the destruction of any records, reports, or reproductions thereof, or other papers, that are more than two years old, and that are no longer necessary for determining employer liability or an applicant's benefit rights or for the administration of this chapter, including any required audit. The commissioner may provide for the destruction or disposition of any record, report, or other paper that has been photographed, duplicated, or reproduced.

History: 1999 c 107 s 57,66

268.188 SUBPOENAS; OATHS.

(a) The commissioner shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of individuals and the production of documents and other personal property necessary in connection with the administration of sections 268.03 to 268.23.

(b) Individuals subpoenaed, other than applicants or officers and employees of an employer that is the subject of the inquiry, shall be allowed fees the same as witness fees in civil actions in district court. The fees need not be paid in advance.

(c) The subpoena shall be enforceable through the district court in the district that the subpoena is issued.

History: 1999 c 107 s 58,66

268.19 INFORMATION.

(a) Except as otherwise provided by this section, data gathered from any employer or individual pursuant to the administration of sections 268.03 to 268.23 are private data on individuals or nonpublic data not on individuals as defined in section 13.02, subdivisions 9 and 12, and may not be disclosed except pursuant to a court order or section 13.05. These data may be disseminated to and used by the following agencies without the consent of the subject of the data:

(1) state and federal agencies specifically authorized access to the data by state or federal law;

(2) any agency of Minnesota or any other state; or any federal agency charged with the administration of an employment security law or the maintenance of a system of public employment offices;

(3) human rights agencies within Minnesota that have enforcement powers;

(4) the department of revenue must have access to department private data on individuals and nonpublic data not on individuals only to the extent necessary for enforcement of Minnesota tax laws;

(5) public and private agencies responsible for administering publicly financed assistance programs for the purpose of monitoring the eligibility of the program's recipients;

(6) the department of labor and industry on an interchangeable basis with the department subject to the following limitations and regardless of any law to the contrary:

(i) the department must have access to private data on individuals and nonpublic data not on individuals for uses consistent with the administration of its duties under sections 268.03 to 268.23; and

(ii) the department of labor and industry must have access to private data on individuals and nonpublic data not on individuals for uses consistent with the administration of its duties under Minnesota law;

(7) the department of trade and economic development may have access to private data on individual employers and nonpublic data not on individual employers for its internal use only; when received by the department of trade and economic development, the data remain private data on individuals or nonpublic data;

(8) local and state welfare agencies for monitoring the eligibility of the data subject for assistance programs, or for any employment or training program administered by those agencies, whether alone, in combination with another welfare agency, or in conjunction with the department or to monitor and evaluate the statewide Minnesota family investment program by providing data on recipients and former recipients of food stamps, cash assistance under chapter 256, 256D, 256J, or 256K, child care assistance under chapter 119B, or medical programs under chapter 256B, 256D, or 256L;

(9) local, state, and federal law enforcement agencies for the sole purpose of ascertaining the last known address and employment location of the data subject, provided the data subject is the subject of a criminal investigation; and

(10) the department of health may have access to private data on individuals and nonpublic data not on individuals solely for the purposes of epidemiologic investigations.

(b) Data on individuals and employers that are collected, maintained, or used by the department in an investigation pursuant to section 268.182 are confidential as to data on individuals and protected nonpublic data not on individuals as defined in section 13.02, subdivisions 3 and 13, and must not be disclosed except pursuant to statute or court order or to a party named in a criminal proceeding, administrative or judicial, for preparation of a defense.

(c) Tape recordings and transcripts of recordings of proceedings conducted in accordance with section 268.105 and exhibits received into evidence at those proceedings are private data on individuals and nonpublic data not on individuals and must be disclosed only pursuant to the administration of section 268.105, or pursuant to a court order.

(d) The department may disseminate an employer's name, address, industry code, occupations employed, and the number of employees by ranges of not less than 100 for the purpose of assisting individuals using the Minnesota workforce center system in obtaining employment.

(e) The general aptitude test battery and the nonverbal aptitude test battery as administered by the department are private data on individuals or nonpublic data.

(f) Data gathered by the department pursuant to the administration of sections 268.03 to 268.23 must not be made the subject or the basis for any suit in any civil proceedings, administrative or judicial, unless the action is initiated by the department.

History: 1999 c 107 s 66

268.192 PROTECTION OF RIGHTS AND BENEFITS.

[For text of subd 1, see M.S.1998]

Subd. 2. **No assignment of benefits; exemptions.** Any assignment, pledge, or encumbrance of benefits shall be void. Benefits shall be exempt from levy, execution, attachment,

or any other remedy provided for the collection of debt. Any waiver of this subdivision shall be void.

History: 1999 c 107 s 59

268.194 REEMPLOYMENT COMPENSATION TRUST FUND.

Subdivision 1. **Establishment.** There is hereby established as a special state fund, separate and apart from all other public money or funds of this state, a reemployment compensation trust fund, that shall be administered by the commissioner exclusively for the payment of benefits. This fund shall consist of:

- (1) all taxes collected;
- (2) interest earned upon any money in the fund;
- (3) payments in lieu of taxes paid by nonprofit organizations and the state and political subdivisions;
- (4) voluntary payments under section 268.051, subdivision 7;
- (5) any money received as a loan from the federal unemployment trust fund in accordance with United States Code, title 42, section 1321, of the Social Security Act;
- (6) any other money received pursuant to a reciprocal benefit arrangement with the federal government or any other state;
- (7) all money recovered on overpaid benefits;
- (8) all money recovered on losses sustained by the fund;
- (9) all money received from the contingent account under section 268.196, subdivision 3;
- (10) all money credited to the account of Minnesota in the federal unemployment trust fund pursuant to United States Code, title 42, section 1103, of the Social Security Act, also known as the Reed Act; and
- (11) all money received for the fund from any other source.

Subd. 2. **Commissioner of finance to be custodian; separate accounts.** (a) The commissioner of finance shall be the treasurer and custodian of the fund, administer the fund in accordance with the directions of the commissioner, and issue warrants upon it. The commissioner of finance shall maintain within the fund three separate accounts:

- (1) a clearing account;
- (2) an unemployment trust fund account; and
- (3) a benefit payment account.

All money payable to the fund, upon receipt by the commissioner, shall be forwarded to the commissioner of finance who shall immediately deposit the money in the clearing account. All money in the clearing account, after clearance, shall be deposited to the credit of Minnesota's account in the federal unemployment trust fund. Tax refunds payable pursuant to section 268.057 may be paid from the clearing account or the benefit payment account.

(b) The benefit payment account shall consist of all money requisitioned from Minnesota's account in the federal unemployment trust fund for the payment of benefits. Money in the clearing and benefit payment accounts may be deposited by the commissioner of finance, under the direction of the commissioner, in any depository bank that general funds of Minnesota may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. Money in the clearing and benefit payment accounts shall be maintained in separate accounts on the books of the depository bank. This money shall be secured by the depository bank to the same extent and in the same manner as required by the general depository law of Minnesota.

Subd. 3. **Exclusive use.** (a) Money requisitioned from Minnesota's account in the federal unemployment trust fund shall be used exclusively for the payment of benefits and for tax refunds pursuant to section 268.057, except that money credited to Minnesota's account pursuant to United States Code, title 42, section 1103 of the Social Security Act, also known as the Reed Act, may be used for the payment of expenses of administration. The commissioner shall from time to time requisition from the federal unemployment trust fund the amounts necessary for the payment of benefits and tax refunds for a reasonable future period. Upon

receipt the commissioner of finance shall deposit the money in the benefit payment account and issue warrants for the payment of benefits solely from the benefit payment account.

(b) Expenditures of money in the benefit payment account and tax refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers.

(c) All warrants issued for the payment of benefits and tax refunds shall bear the signature of the commissioner of finance and the counter signature of the commissioner.

Subd. 3a. [Renumbered subdivision 4]

Subd. 4. **Reimbursements.** The commissioner is authorized to make to other state or federal agencies and to receive from other state or federal agencies, reimbursements from or to the fund, in accordance with reciprocal arrangements entered into pursuant to section 268.131.

Money received pursuant to a reciprocal agreement shall be placed directly in the benefit payment account of the fund.

Subd. 5. **Reed Act money.** (a) Money credited to the account of Minnesota in the federal unemployment trust fund pursuant to United States Code, title 42, section 1103, of the Social Security Act, also known as the Reed Act, may be requisitioned and used for (1) the payment of benefits, or (2) expenses incurred for the administration of sections 268.03 to 268.23 pursuant to a specific appropriation by the legislature. Any money used for the payment of benefits may be restored for appropriation and use for administrative expenses upon request of the governor to the United States Secretary of Labor.

(b) Reed Act money may be used for expenses in the administration of sections 268.03 to 268.23 provided that the expenses are incurred and the money is requisitioned after the enactment of an appropriation law that:

(1) specifies the amounts and the purposes for which the money is appropriated;

(2) limits the period within which the money may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law; and

(3) limits the amount that may be obligated to an amount that does not exceed the amount by which the aggregate of the amounts transferred to the account of Minnesota pursuant to the Reed Act exceeds the aggregate of the amounts used pursuant to this subdivision and charged against the amounts transferred to the account of Minnesota. For the purposes of this subdivision, amounts used for administration shall be chargeable against the transferred amounts at the time of the obligation.

(c) Reed Act money requisitioned for the payment of expenses of administration shall remain a part of the reemployment compensation trust fund. The commissioner shall account for the use of this money in accordance with the standards established by the United States Secretary of Labor. If any money is not spent for the purpose for which it was appropriated, or, if it remains unspent at the end of the period specified by the law appropriating the money, it shall be returned for credit to Minnesota's account in the federal unemployment trust fund.

Subd. 6. **Borrowing federal funds.** (a) The governor is hereby authorized, if necessary, to borrow funds from the federal unemployment trust fund in accordance with United States Code, title 42, section 1321 of the Social Security Act in order to pay benefits.

(b) Any amount transferred to the fund under the terms of any loan shall be repayable as provided in United States Code, title 42, sections 1101(d)(1), 1103(b)(2), and 1322 of the Social Security Act.

(c) Interest payable on any loan shall be paid in accordance with section 268.051, subdivision 8, paragraph (b).

History: 1999 c 107 s 60,66

268.196 ECONOMIC SECURITY ADMINISTRATION ACCOUNT.

Subdivision 1. **Administration account.** (a) There is hereby created in the state treasury a special account to be known as the economic security administration account. All money that is deposited or paid into this account shall be continuously available to the commissioner for expenditure to administer sections 268.03 to 268.23, and shall not lapse at any time. The administration account shall consist of:

(1) all money received from the federal government to administer sections 268.03 to 268.23;

(2) any money received as compensation for services or facilities supplied to the federal government or any other state;

(3) any amounts received for losses sustained by this account or by reason of damage to equipment or supplies; and

(4) any proceeds from the sale or disposition of any equipment or supplies that may no longer be necessary for the proper administration of those sections.

(b) All money in this account shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as are provided by law for the other special accounts in the state treasury. The commissioner of finance, as treasurer and custodian of this account, shall be liable for the faithful performance of duties in connection with this account.

(c) All money in this account shall be spent solely for the purposes and in the amounts found necessary by the United States Secretary of Labor for the proper and efficient administration of sections 268.03 to 268.23.

Subd. 2. State to replace money wrongfully used. If any money received under United States Code, title 42, section 501 of the Social Security Act or the Wagner-Peyser Act, are found by the United States Secretary of Labor to have been spent for purposes other than, or in amounts in excess of, those necessary for the proper administration of sections 268.03 to 268.23, the commissioner may replace the money from the contingent account. If the money is not replaced from the contingent account, it is the policy of this state that the money be replaced by money appropriated for that purpose from the general funds of this state. If not replaced from the contingent account, the commissioner shall, at the earliest opportunity, submit to the legislature a request for the appropriation of that amount.

Subd. 3. Contingent account. (a) There is hereby created in the state treasury a special account, to be known as the economic security contingent account, that shall not lapse nor revert to any other fund. This account shall consist of all money appropriated therefor by the legislature, all money in the form of interest and penalties collected pursuant to sections 268.057, 268.18, and 268.184, all money received in the form of voluntary contributions to this account, and any interest earned on the account. All money in this account shall be supplemental to all federal money available to the commissioner. Money in this account is hereby appropriated to the commissioner and shall be available to the commissioner for those expenditures the commissioner considers necessary in connection with the administration of sections 268.03 to 268.23.

Whenever the commissioner spends money from the contingent account for the administration of sections 268.03 to 268.23 for which money will later be made available by the federal government, the contingent account shall, when money is available, be reimbursed from the administration account. The commissioner shall certify to the commissioner of finance the amount of the reimbursement and the commissioner of finance shall transfer that amount from the administration account to the contingent account.

(c) All money in this account shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for the other special accounts in the state treasury. On June 30 of each year, all amounts in excess of \$300,000 in this account shall be paid over to the reemployment compensation trust fund.

History: 1999 c 107 s 61,66

268.198 JOB SERVICE OFFICES.

Subdivision 1. Establishment. The commissioner shall establish and maintain free public job service offices, in that number and in those places as may be necessary for the purpose of providing reemployment assistance services to applicants, as well as performing the functions under the Wagner-Peyser Act, United States Code, title 29, section 49.

Subd. 2. Financing. All money received by this state under the Wagner-Peyser Act shall be paid into the economic security administration account and expended solely for the maintenance of state public job service offices. For the purpose of establishing and maintain-

ing free public job service offices and promoting the use of their facilities, the commissioner is authorized to enter into agreements with any public agency whose purposes are reasonably related to the purposes of the job service.

Subd. 3. **Veterans representatives.** There shall be assigned to the staff of the job service one or more employees of the department who shall perform the duties of a veterans employment representative. The position of veterans employment representative shall be filled by veterans as defined in section 197.447.

History: 1999 c 107 s 62,66

268.21 NONLIABILITY OF STATE.

(a) Benefits shall be payable only to the extent provided in this chapter and to the extent that money is available in the fund and neither the state nor the commissioner shall be liable for any amount in excess of the money available in the fund.

(b) No person shall make any demand, bring any suit, or other proceeding to recover from the state or the commissioner any sum alleged to be due on a benefit account after the expiration of two years from the effective date of the benefit account.

History: 1999 c 107 s 63

268.23 SEVERABLE.

In the event that the United States Department of Labor determines that any provision of sections 268.03 to 268.23, or any other provision of Minnesota Statutes relating to the reemployment compensation program, is not in conformity with the requirements of federal law, the provision shall have no force or effect; but if only a portion of the provision, or the application to any person or circumstances, is held not in conformity, the remainder of the provision and the application of the provision to other persons or circumstances shall not be affected.

History: 1999 c 107 s 64,66

268.30 GRANTS-IN-AID TO YOUTH INTERVENTION PROGRAMS.

[For text of subd 1, see M.S.1998]

Subd. 2. **Applications.** Applications for a grant-in-aid shall be made by the administering agency to the commissioner. The grant-in-aid is contingent upon the agency having obtained from the community in which the youth intervention program is established local matching money two times the amount of the grant that is sought.

The commissioner shall provide the application form, procedures for making application form, criteria for review of the application, and kinds of contributions in addition to cash that qualify as local matching money. No grant to any agency may exceed \$50,000.

History: 1999 c 107 s 65

268.3661 YOUTHBUILD TECH.

Subdivision 1. **Generally.** A pilot program is established within the department to make grants to eligible organizations for programs which are available to students who have completed at least four months in a program funded under section 268.362. Programs funded under this section must provide participants with the knowledge and skills necessary to obtain entry-level jobs in the computer industry, including core computer classes and job-specific education.

Subd. 2. **Grants.** The provisions of section 268.361; 268.362, subdivision 2; 268.3625; and 268.366 shall apply to grants under this section.

History: 1999 c 223 art 2 s 37

268.551 DEFINITIONS.

[For text of subs 1 and 2, see M.S.1998]

Subd. 3. **Eligible applicant.** "Eligible applicant" means a person who:

- (1) has been a resident of this state for at least one month;
- (2) is unemployed;
- (3) is not receiving and is not eligible to receive reemployment compensation; and
- (4) is a targeted young person as defined in Laws 1990, chapter 562, article 4, section 12, between the ages of 14 and 21, who, because of a lack of personal resources and skills, needs assistance in setting and realizing education goals and in becoming a contributing member of the community.

[For text of subd 4, see M.S.1998]

History: 1999 c 107 s 66

268.552 WAGE SUBSIDY PROGRAM.

[For text of subds 1 to 4, see M.S.1998]

Subd. 5. **Allocation to applicants.** Priority for subsidies shall be in the following order:

- (1) applicants living in households with no other income source;
- (2) applicants whose incomes and resources are less than the standard for eligibility for general assistance; and
- (3) applicants who are eligible for the Minnesota family investment program.

[For text of subds 6 to 10, see M.S.1998]

History: 1999 c 159 s 120

268.65 APPROVED TRAINING.

[For text of subds 1 to 4, see M.S.1998]

Subd. 5. **Employer penalty.** An employer who enters into an on-the-job training agreement with the commissioner and who terminates the trainee in a manner other than provided in this subdivision shall repay 70 percent of the amount of reemployment compensation benefits paid to the individual while in the training program with that employer if the termination occurs during the training period. If the termination occurs during the 12-month period of guaranteed employment, the employer receives a proportional reduction in the amount it must repay. Penalties assessed under this subdivision are in addition to any other penalties provided for by this chapter and are subject to the same collection procedures that apply to past due contributions under this chapter. Penalties under this subdivision shall be paid to the commissioner and credited to the job search and relocation fund. When it is determined to be in the best interest of the state, the commissioner may waive all or part of the employer penalty. The commissioner shall use any money collected under this paragraph for job search and relocation expenses of structurally unemployed workers participating in the training program.

History: 1999 c 107 s 66

268.666 WORKFORCE SERVICE AREAS.

[For text of subds 1 to 4, see M.S.1998]

Subd. 5. **Interpreter.** Workforce centers in areas that have a significant number of residents for whom English is not the primary language must attempt to provide outreach services to those residents.

History: 1999 c 223 art 2 s 38

268.672 DEFINITIONS.

[For text of subds 1 to 5, see M.S.1998]

Subd. 6. **Eligible job applicant.** "Eligible job applicant" means a person who:

(1) has attempted to secure a nonsubsidized job by completing comprehensive job readiness and is: a Minnesota family investment program recipient who is making good faith efforts to comply with a job search support plan as defined under section 256J.52, subdivision 3, or an employment plan as defined under section 256J.52, subdivision 5, but has failed to find suitable employment; or

(2) is a member of a household supported only by:

(i) a low-income worker; or

(ii) a person who is underemployed as that term is defined in section 268.61, subdivision 5; or

(3) is a member of a family that is eligible for, but not receiving public assistance.

[For text of subs 7 to 21, see M.S.1998]

History: 1999 c 159 s 121

268.86 EMPLOYMENT AND TRAINING PROGRAMS.

Subd. 2. **Interagency agreements.** By October 1, 1987, the commissioner and the commissioner of human services shall enter into a written contract for the design, delivery, and administration of employment and training services for applicants for or recipients of food stamps, the Minnesota family investment program, and general assistance. The contract must address:

(1) specific roles and responsibilities of each department;

(2) assignment and supervision of staff for interagency activities including any necessary interagency employee mobility agreements under the administrative procedures of the department of employee relations;

(3) mechanisms for determining the conditions under which individuals participate in services, their rights and responsibilities while participating, and the standards by which the services must be administered;

(4) procedures for providing technical assistance to local service units, Indian tribes, and employment and training service providers;

(5) access to appropriate staff for ongoing development and interpretation of policy, rules, and program standards;

(6) procedures for reimbursing appropriate agencies for administrative expenses; and

(7) procedures for accessing available federal funds.

[For text of subs 6 to 10, see M.S.1998]

History: 1999 c 159 s 122

268.871 LOCAL DELIVERY.

Subdivision 1. **Responsibility and certification.** (a) Unless prohibited by federal law or otherwise determined by state law, a local service unit is responsible for the delivery of employment and training services. After February 1, 1988, employment and training services must be delivered by certified employment and training service providers.

(b) The local service unit's employment and training service provider must meet the certification standards in this subdivision in order to be certified to deliver any of the following employment and training services and programs: wage subsidies; general assistance grant diversion; food stamp employment and training programs; community work experience programs; MFIP job search; MFIP grant diversion; MFIP on-the-job training; and MFIP case management.

(c) The commissioner shall certify a local service unit's service provider to provide these employment and training services and programs if the commissioner determines that the provider has:

(1) past experience in direct delivery of the programs specified in paragraph (b);

(2) staff capabilities and qualifications, including adequate staff to provide timely and effective services to clients, and proven staff experience in providing specific services such as assessments, career planning, job development, job placement, support services, and knowledge of community services and educational resources;

(3) demonstrated effectiveness in providing services to public assistance recipients and other economically disadvantaged clients; and

(4) demonstrated administrative capabilities, including adequate fiscal and accounting procedures, financial management systems, participant data systems, and record retention procedures.

(d) When the only service provider that meets the criterion in paragraph (c), clause (1), has been decertified, according to subdivision 1a, in that local service unit, the following criteria shall be substituted: past experience in direct delivery of multiple, coordinated, non-duplicative services, including outreach, assessments, identification of client barriers, employability development plans, and provision or referral to support services.

[For text of subs 1a to 4, see M.S.1998]

Subd. 5. [Repealed, 1999 c 159 s 154]

History: 1999 c 159 s 123

268.90 COMMUNITY INVESTMENT PROGRAMS.

[For text of subd 1, see M.S.1998]

Subd. 2. **Employment conditions.** (a) An eligible nonprofit or public employer may not terminate, lay off, or reduce the regular working hours of an employee for the purpose of hiring an individual with money available under this program. An eligible employer may not hire an individual with money available through this program if any other person is on layoff from the same or a substantially equivalent job.

(b) Community investment program participants are employees of the project employer within the meaning of workers' compensation laws, personal income tax, and the Federal Insurance Contribution Act, but not retirement or civil service laws.

(c) Each project and job must comply with all applicable affirmative action, fair labor, health, safety, and environmental standards.

(d) Individuals employed under the community investment program must be paid a wage at the same wage rates as work site or employees doing comparable work in that locality, unless otherwise specified in law.

(e) All employees are limited to 32 hours or four days a week, so that they can continue to seek full-time private sector employment, unless otherwise specified in law.

(f) The commissioner shall establish, by rule, the terms and conditions governing the participation of appropriate public assistance recipients. The rules must, at a minimum, establish the procedures by which the minimum and maximum number of work hours and maximum allowable travel distances are determined, the amounts and methods by which work expenses will be paid, and the manner in which support services will be provided. The rules must also provide for periodic reviews of clients continuing employment in community investment programs.

(g) Participation in a community investment program by a recipient of Minnesota family investment program assistance or general assistance is voluntary.

[For text of subs 3 to 5, see M.S.1998]

History: 1999 c 159 s 124

268.9165 AUTHORITY TO WAIVE REQUIREMENTS DURING DISASTER PERIODS.

The commissioner of children, families, and learning may waive requirements under sections 119A.50 to 119A.53, for up to nine months after the disaster, for Head Start grantees

in areas where a federal disaster has been declared under United States Code, title 42, section 5121, et seq., or the governor has exercised authority under chapter 12. The commissioner shall notify the chairs of the senate family and early childhood education budget division, the senate education finance committee, the house family and early childhood education finance division, the house education committee, and the house ways and means committee ten days before the effective date of any waiver granted under this section.

History: 1999 c 86 art 1 s 62

268.95 INDIVIDUAL ENTERPRISE.

[For text of subs 1 to 3, see M.S.1998]

Subd. 4. **Pilot program.** The commissioner shall develop a pilot program, in cooperation with the commissioners of trade and economic development and human services, to enable low-income persons to start or expand self-employment opportunities or home-based businesses that are designed to make the individual entrepreneurs economically independent. The commissioner of human services shall seek necessary waivers from federal regulations to allow recipients of the Minnesota family investment program assistance to participate and retain eligibility while establishing a business.

[For text of subd 5, see M.S.1998]

History: 1999 c 159 s 125

268.975 DEFINITIONS.

[For text of subs 1 and 2, see M.S.1998]

Subd. 3. **Dislocated worker.** "Dislocated worker" means an individual who is a resident of Minnesota at the time employment ceased or was working in the state at the time employment ceased and:

(1) has been terminated or who has received a notice of termination from public or private sector employment, is eligible for or has exhausted entitlement to reemployment compensation, and is unlikely to return to the previous industry or occupation;

(2) has been terminated or has received a notice of termination of employment as a result of any plant closing or any substantial layoff at a plant, facility, or enterprise;

(3) has been long-term unemployed and has limited opportunities for employment or reemployment in the same or a similar occupation in the area in which the individual resides, including older individuals who may have substantial barriers to employment by reason of age; or

(4) has been self-employed, including farmers and ranchers, and is unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters, subject to rules to be adopted by the commissioner.

[For text of subs 3a to 13, see M.S.1998]

History: 1999 c 107 s 66

268.976 EARLY WARNING SYSTEM.

Subdivision 1. **Early warning indicators.** The commissioner, in cooperation with the commissioners of revenue and trade and economic development, shall establish and oversee an early warning system to identify industries and businesses likely to experience large losses in employment including a plant closing or a substantial layoff, by collecting and analyzing information which may include, but not be limited to, products and markets experiencing declining growth rates, companies and industries subject to competition from production in low wage counties, changes in ownership, layoff and employment patterns, payments of reemployment compensation contributions, and state tax payments. The commissioner may request the assistance of businesses, business organizations, and trade associations in identifying businesses, industries, and specific establishments that are likely to expe-

rience large losses in employment. The commissioner may request information and other assistance from other state agencies for the purposes of this subdivision.

[For text of subs 2 and 3, see M.S.1998]

History: 1999 c 107 s 66

268.98 PERFORMANCE STANDARDS, REPORTING, COST LIMITATIONS.

[For text of subs 1 and 2, see M.S.1998]

Subd. 3. **Cost limitations.** (a) For purposes of sections 268.9781 and 268.9782, funds allocated to a grantee are subject to the following limitations:

(1) a maximum of 15 percent for administration in a worker adjustment services plan and ten percent in a dislocation event services grant;

(2) a minimum of 50 percent for provision of training assistance;

(3) no more than ten percent statewide may be allocated annually for support services, as defined in section 268.975, subdivision 13; and

(4) the balance used for provision of basic readjustment assistance.

(b) A waiver of the cost limitation on providing training assistance may be requested. The waiver may not permit less than 30 percent of the funds be spent on training assistance.

(c) The commissioner shall prescribe the form and manner for submission of an application for a waiver under paragraph (b). Criteria for granting a waiver shall be established by the commissioner in consultation with the workforce development council.

History: 1999 c 223 art 2 s 39