

## CHAPTER 268

## DEPARTMENT OF ECONOMIC SECURITY

268.0111	Definitions.	268.184	Employer misconduct; penalty.
268.0121	Creation.	268.188	Subpoenas; oaths.
268.0122	Powers and duties.	268.19	Data privacy.
268.0124	Plain language in written materials.	268.192	Protection of rights.
268.022	Workforce development fund.	268.194	Unemployment insurance program trust fund.
268.027	Department of economic security; Minneapolis location; right of eminent domain.	268.196	Administration account.
268.029	Citation; unemployment insurance program.	268.198	Repealed.
268.03	Public purpose of the Minnesota unemployment insurance program.	268.20	Representation in court.
268.035	Definitions.	268.22	Saving clause.
268.042	Employers coverage.	268.23	Severable.
268.045	Employer tax or reimbursable accounts.	268.26	Job service offices.
268.047	Effect on an employer of unemployment benefits paid.	268.29	Juvenile justice program.
268.051	Employers taxes.	268.665	Workforce development council.
268.052	Payment to fund by state and political subdivisions.	268.6715	Repealed.
268.0525	Indian tribes.	268.672	Repealed.
268.053	Payment to fund by nonprofit organizations.	268.673	Repealed.
268.058	Lien, levy, setoff, and civil action.	268.6751	Repealed.
268.059	Garnishment for delinquent taxes and unemployment benefit overpayments.	268.677	Repealed.
268.07	Benefit account.	268.681	Repealed.
268.085	Eligibility requirements.	268.6811	Repealed.
268.086	Continued request for unemployment benefits on an active benefit account.	268.682	Repealed.
268.095	Disqualification provisions.	268.85	Repealed.
268.101	Determinations on disqualification and eligibility.	268.86	Employment and training programs.
268.105	Hearings; appeals.	268.871	Local delivery.
268.131	Reciprocal unemployment benefit arrangements.	268.88	Local service unit plans.
268.145	Income tax withholding.	268.90	Repealed.
268.18	Unemployment benefit overpayments.	268.971	Repealed.
		268.975	Repealed.
		268.976	Repealed.
		268.9771	Repealed.
		268.978	Repealed.
		268.9781	Repealed.
		268.9782	Repealed.
		268.9783	Repealed.
		268.979	Repealed.
		268.98	Repealed.

**268.0111 DEFINITIONS.**

*[For text of subs 1 to 3a, see M.S.2000]*

Subd. 4. **Employment and training services.** "Employment and training services" means programs, activities, and services related to job training, job placement, and job creation including job service programs, Job Training Partnership Act programs, wage subsidies, job search, counseling, case management, community work experience programs, displaced homemaker programs, disadvantaged job training programs, grant diversion, youth employment programs, conservation corps, apprenticeship programs, community development corporations, economic development programs, and opportunities industrialization centers.

*[For text of subs 4a to 8, see M.S.2000]*

Subd. 9. [Repealed, 2001 c 79 s 8]

**History:** 2001 c 79 s 2

**268.0121 CREATION.**

*[For text of subs 1 to 3, see M.S.2000]*

Subd. 4. **Delegation of powers.** The commissioner may delegate, in written orders filed with the secretary of state, any powers or duties subject to the commissioner's control to officers and employees in the department. Regardless of any other law, the commissioner may delegate the execution of specific contracts or specific types of contracts to the commissioner's deputies, an assistant commissioner, or a program

director if the delegation has been approved by the commissioner of administration and filed with the secretary of state.

*[For text of subd 5, see M.S.2001]*

**History:** 2001 c 175 s 52

## **268.0122 POWERS AND DUTIES.**

*[For text of subd 1, see M.S.2000]*

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

(1) administer and supervise all forms of unemployment benefits 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 federal unemployment insurance program, 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;

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

(10) require all general employment and training programs that receive state funds to make available information about opportunities for women in nontraditional careers in the trades and technical occupations.

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

(1) administer the unemployment insurance program 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 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;

(4) 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;

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

(6) as requested, certify employment and training services, and decertify services that fail to comply with performance criteria according to standards established by the commissioner;

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

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

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

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

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

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

(13) 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.2000]*

**History:** 2001 c 79 s 3; 2001 c 175 s 52; 1Sp2001 c 9 art 10 s 61

#### **268.0124 PLAIN LANGUAGE IN WRITTEN MATERIALS.**

(a) To the extent reasonable and consistent with the goals of providing easily understandable and readable materials and complying with federal and state laws governing the programs, all written materials relating to services and determinations of eligibility for or amounts of benefits that will be given to applicants for or recipients of assistance under a program administered or supervised by the commissioner of economic security must be understandable to a person of average intelligence and education.

(b) All written materials relating to determinations of eligibility for or amounts of benefits that will be given to applicants for or recipients of assistance under programs administered or supervised by the commissioner of economic security must be developed to satisfy the plain language requirements of the Plain Language Contract Act under sections 325G.29 to 325G.36. Materials may be submitted to the attorney general for review and certification. Regardless of section 325G.35, subdivision 1, the attorney general shall review submitted materials to determine whether they comply with the requirements of section 325G.31. The remedies available pursuant to sections 8.31 and 325G.33 to 325G.36 do not apply to these materials. Failure to comply with this section does not provide a basis for suspending the implementation or operation of other laws governing programs administered by the commissioner.

(c) The requirements of this section apply to all materials modified or developed by the commissioner on or after July 1, 1988. The requirements of this section do not apply to materials that must be submitted to a federal agency for approval, to the extent that application of the requirements prevents federal approval.

(d) Nothing in this section may be construed to prohibit a lawsuit brought to require the commissioner to comply with this section.

**History:** 2001 c 175 s 52

#### **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 268.035, subdivision 24. 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 job skills partnership board for the purposes of section 116L.17. The board must act as the fiscal agent for the money and must disburse that money for the purposes of section 116L.17, 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) 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.

**History:** 2001 c 7 s 53; 1Sp2001 c 4 art 2 s 22

#### **268.027 DEPARTMENT OF ECONOMIC SECURITY; MINNEAPOLIS LOCATION; RIGHT OF EMINENT DOMAIN.**

Regardless of section 16B.24 or chapter 94, the commissioner of administration, in consultation with the commissioner of economic security, is authorized to buy and sell real property in Minneapolis and the greater Minneapolis area for the purpose of relocating department offices to locations more accessible to the residents of Minneapolis and colocating with other social service agencies.

Property acquired under authority of this section may be acquired by gift, purchase, or condemnation proceedings. Condemnation proceedings must be done under chapter 117. Condemnation proceedings authorized by this section may be used to acquire property at only one proposed office site.

**History:** 2001 c 175 s 52

#### **268.029 CITATION; UNEMPLOYMENT INSURANCE PROGRAM.**

Sections 268.029 to 268.23 shall be known and may be cited as the "Minnesota Unemployment Insurance Program Law."

**History:** 2001 c 175 s 1

#### **268.03 PUBLIC PURPOSE OF THE MINNESOTA UNEMPLOYMENT INSURANCE PROGRAM.**

**Subdivision 1. Statement.** The public purpose of sections 268.029 to 268.23 is: Economic insecurity due to involuntary unemployment of workers in Minnesota is a subject of general concern that requires appropriate action by the legislature. The public good will be promoted by providing workers who are unemployed through no fault of their own a temporary partial wage replacement to assist the unemployed worker to become reemployed. This program will be known as the "Minnesota unemployment insurance program."

**Subd. 2. Standard of proof.** All issues of fact under the Minnesota Unemployment Insurance Program Law shall be determined by a preponderance of the evidence. Preponderance of the evidence means evidence in substantiation of a fact that, when weighed against the evidence opposing the fact, is more convincing and has a greater probability of truth.

**History:** 2001 c 175 s 2,52

**268.035 DEFINITIONS.**

Subdivision 1. **Scope.** Unless the language or context clearly indicates that a different meaning is intended, the words, terms, and phrases in this section shall, for the purposes of the Minnesota Unemployment Insurance Program Law, have the meaning stated.

*[For text of subd 2, see M.S.2000]*

Subd. 2a. **Applicant.** "Applicant" means an individual who has filed an application for unemployment benefits and has established or is pursuing the establishment of a benefit account.

*[For text of subd 3, see M.S.2000]*

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

(1) the first four of the last five completed calendar quarters prior to the effective date of an applicant's benefit account as set forth below:

If the benefit account is effective  
on or between these dates:

January 1 - March 31

April 1 - June 30

July 1 - September 30

October 1 - December 31

The base period  
is the prior:

October 1 - September 30

January 1 - December 31

April 1 - March 31

July 1 - June 30

(2) if during the base period under clause (1) an applicant received workers' compensation for temporary disability under chapter 176 or a similar federal law or similar law of another state, 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. [Renumbered subd 26a]

*[For text of subds 6 and 7, see M.S.2000]*

Subd. 8. [Renumbered subd 2a]

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

*[For text of subs 9 to 12, see M.S.2000]*

Subd. 12a. **Department.** "Department" means the department of economic security.

*[For text of subd 13, see M.S.2000]*

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 the Minnesota Unemployment Insurance Program Law;

(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 homemaker, 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.

*[For text of subs 15 to 19, see M.S.2000]*

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

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

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

(3) employment for a foreign government;

(4) 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;

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

(6) 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;

(7) 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);

(8) 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);

(9) 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;

(10) 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 unemployment benefit coverage for the participants;

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

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

(13) 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;

(14) 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;

(15) 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;

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

(17) 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;

(18) 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;

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

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

(21) 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;

(22) 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;

(23) 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;

(24) 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;

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

(26) 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;

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

(28) 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;

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

(30) 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;

(31) casual employment performed for an individual, other than domestic employment under clause (17), that does not promote or advance that employer's trade or business;

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

(33) 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 subds 21 to 24, see M.S.2000]*

Subd. 25. **Taxes.** "Taxes" means the money payments required by the Minnesota Unemployment Insurance Program Law to be paid into the fund by an employer on account of paying wages to employees in covered employment.

*[For text of subd 26, see M.S.2001]*

Subd. 26a. **Unemployment benefits.** "Unemployment benefits" means the money payments portion of the Minnesota unemployment insurance program available to an applicant.



*[For text of subds 27 and 28, see M.S.2000]*

Subd. 29. **Wages.** "Wages" means all compensation for services, including commissions; bonuses; severance payments; vacation and holiday pay; back pay as of the date of payment; tips and gratuities paid to an employee by a customer of an employer and accounted for by the employee to the employer; sickness and accident disability payments, except as otherwise provided in this subdivision; and the cash value of all compensation in any medium other than cash, except:

(1) the amount of any payment made to, or on behalf of, an employee under a plan established by an employer that makes provision for employees generally or for a class or classes of employees, including any amount paid by an employer for insurance or annuities, or into a plan, to provide for a payment, on account of (i) retirement or (ii) medical and hospitalization expenses in connection with sickness or accident disability, or (iii) death;

(2) the payment by an employer of the tax imposed upon an employee under United States Code, title 26, section 3101 of the Federal Insurance Contribution Act, with respect to compensation paid to an employee for domestic employment in a private household of the employer or for agricultural employment;

(3) any payment made to, or on behalf of, an employee or beneficiary (i) from or to a trust described in United States Code, title 26, section 401(a) of the federal Internal Revenue Code, that is exempt from tax under section 501(a) at the time of the payment unless the payment is made to an employee of the trust as compensation for services as an employee and not as a beneficiary of the trust, or (ii) under or to an annuity plan that, at the time of the payment, is a plan described in section 403(a);

(4) sickness or accident disability payments made by the employer after the expiration of six calendar months following the last calendar month that the individual worked for the employer;

(5) disability payments made under the provisions of any workers' compensation law;

(6) sickness or accident disability payments made by a third party payer such as an insurance company;

(7) payments made into a fund, or for the purchase of insurance or an annuity, to provide for sickness or accident disability payments to employees pursuant to a plan or system established by the employer that provides for the employer's employees generally or for a class or classes of employees; or

(8) nothing in this subdivision shall exclude from the term "wages" any payment made under any type of salary reduction agreement, including payments made under a cash or deferred arrangement and cafeteria plan, as defined in United States Code, title 26, sections 401(k) and 125 of the federal Internal Revenue Code, to the extent that the employee has the option to receive the payment in cash.

*[For text of subds 30 to 32, see M.S.2000]*

**History:** 2001 c 175 s 3-8,52

## **268.042 EMPLOYERS COVERAGE.**

Subdivision 1. **Employer for part of year.** Except as provided in subdivision 3, any organization or person that is or becomes an employer subject to the Minnesota Unemployment Insurance Program Law within any calendar year shall be considered to be subject to these sections the entire calendar year.

*[For text of subds 3 and 4, see M.S.2000]*

**History:** 2001 c 175 s 9,52

## **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 nonprofit or government employer that has

elected to be liable for payments in lieu of taxes if that employer has employees in covered employment in the current or the prior calendar year, except as provided in this section. The commissioner shall assess the tax account of a taxpaying employer for all the taxes due under section 268.051 and credit the tax account with all taxes paid. The commissioner shall charge the reimbursable account of a nonprofit or government employer that elects to make payments in lieu of taxes for any unemployment benefits determined chargeable to the employer under section 268.047 and shall credit the reimbursable account with the payments made.

(b) Two or more related taxpaying 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 taxpaying 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 ratings of the employers into a single experience rating and 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 nonprofit or government employers that have elected to be 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 unemployment 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 nonprofit or government employer in the group shall be jointly and severally liable for payments in lieu of taxes for all unemployment benefits paid based upon wage credits from all employers in the group during the period the group reimbursable account was in effect.

*History: 2001 c 175 s 10*

#### **268.047 EFFECT ON AN EMPLOYER OF UNEMPLOYMENT BENEFITS PAID.**

Subdivision 1. **General rule.** Unemployment benefits paid to an applicant, including extended, additional, and shared work benefits, shall be used in computing the future tax rate of a taxpaying base period employer or charged to the reimbursable account of a base period nonprofit or government employer that has elected to be liable for payments in lieu of taxes except as provided in subdivisions 2 and 3. The amount of unemployment benefits used in computing the future tax rate of taxpaying employers or charged to the reimbursable account of a nonprofit or government employer that has elected to be liable for payments in lieu of taxes shall be the same percentage of the total amount of unemployment 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 for all employers.** Unemployment benefits paid shall not be used in computing the future tax rate of a taxpaying base period employer or charged to the reimbursable account of a base period nonprofit or government employer that has elected to be 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 unemployment 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 unemployment 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;

(8) the unemployment benefits were determined overpaid unemployment benefits under section 268.18; or

(9) the fund was reimbursed for the unemployment benefits by the federal government.

**Subd. 3. Exceptions for taxpaying employers.** Unemployment benefits paid shall not be used in computing the future tax rate 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 unemployment 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 unemployment benefits paid for periods after the applicant's discharge from employment.

Subd. 4. **Limitation on exceptions.** Regardless of subdivisions 2 and 3, an exception under those subdivisions will be limited in accordance with section 268.101, subdivision 2, paragraph (b).

Subd. 5. **Notice of unemployment benefits paid.** (a) The commissioner shall notify each employer at least quarterly by mail or electronic transmission of the unemployment benefits paid that will be used in computing the future tax rate of a taxpaying employer, or that have been charged to the reimbursable account of a nonprofit or government employer that has elected to be liable for payments in lieu of taxes. Unless a protest is filed within 30 calendar days from the date of sending of the notice, the notice shall be final and shall not be subject to collateral attack by way of review of a tax rate notice or application for a credit adjustment or refund.

(b) Upon receipt of a protest, the commissioner shall review unemployment benefits to be used in computing the future tax rate of a taxpaying employer or charged to the reimbursable account of a nonprofit or government employer that has elected to be liable for payments in lieu of taxes and determine whether there has been an error made. The commissioner shall either affirm or make a redetermination of the unemployment benefits paid to be used in computing the future tax rate of a taxpaying employer or charged to the reimbursable account of a nonprofit or government employer that has elected to be liable for payments in lieu of taxes, and a notice of affirmation or redetermination shall be sent to the employer by mail or electronic transmission.

(c) The affirmation or redetermination shall be final unless the employer files an appeal within 30 calendar days after the date the affirmation or redetermination was sent. Proceedings on the appeal shall be conducted in accordance with section 268.105.

(d) An employer may not collaterally attack, by way of a protest to a notice of unemployment benefits paid, any prior determination or decision holding that unemployment benefits paid shall be used in computing the future tax rate of a taxpaying employer or charged to the reimbursable account of a nonprofit or government employer that has elected to be liable for payments in lieu of taxes which determination or decision has become final.

(e) The commissioner may at any time upon the commissioner's own motion correct a clerical error that resulted in an incorrect notice under paragraph (a).

**History:** 2001 c 175 s 11

## 268.051 EMPLOYERS TAXES.

*[For text of subd 1, see M.S.2000]*

Subd. 1a. **Tax reports.** (a) Every employer, except those nonprofit and government employers that have elected to make payments in lieu of taxes, shall submit a tax report on a form, or in a manner, prescribed by the commissioner on or before the last day of the month following the end of the calendar quarter, unless the employer meets the requirements for submitting tax reports annually under section 268.0511. An employer that fails to submit a tax report when due, or submits an incorrect tax report, shall be subject to section 268.057, subdivision 1.

(b) Each tax report shall include the total wages paid and the taxable wages paid that quarter, the amount of tax due, and any other information required by the commissioner.

(c) A tax report must be submitted for each calendar quarter even though no wages were paid or no tax is due.

*[For text of subd 2, see M.S.2000]*

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.

(b) The experience rating shall be the ratio obtained by dividing 125 percent of the total unemployment benefits required under section 268.047 to be used in computing the employer's tax rate during the 60 calendar months ending on June 30 of the prior calendar year, by the employer's total taxable payroll for that same period.

(c) For purposes of paragraph (b), 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.

(d) 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 transfer.** (a) When a taxpaying 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 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 a taxpaying 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 attributable to the portion it acquired, and the predecessor employer shall retain the experience rating 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 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 portion of the experience rating.

(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 at the time of the acquisition, the transferred experience rating of the predecessor shall be combined with the successor's experience rating for purposes of computing a tax rate.

(e) If there has been a transfer of an experience rating 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: 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 under paragraph (b).

(h) Should an employer not have been in operation long enough to qualify for an experience rating under subdivision 3, paragraph (a), the experience rating for purposes of this subdivision shall consist of those factors that normally make up an experience rating, without the 12-month minimum.

(i) If the commissioner finds that a transaction was done, in whole or in part, to avoid an experience rating or the transfer of an experience rating, the commissioner may transfer all or part of the experience rating 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 to the payroll of an employer with a lower experience rating.

(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 ratings of the corporations shall be combined as of the date of acquisition or merger for the purpose of computing a tax rate.

*[For text of subds 5 and 6, see M.S.2000]*

**Subd. 7. Tax rate buydown.** (a) Any taxpaying employer who has been assigned a tax rate based upon an experience rating may, upon the voluntary payment of an amount equivalent to any portion or all of the unemployment benefits used in computing the experience rating plus a surcharge of 25 percent, obtain a cancellation of unemployment benefits used equal to the payment made, less the surcharge. Upon the payment, the commissioner shall compute a new experience rating for the employer, and determine a new tax rate.

(b) Voluntary payments may be made only during the 30 calendar day period immediately following the date of sending of the notice of tax rate. This period may be extended, upon a showing of good cause, but in no event shall a voluntary payment be allowed after 120 calendar days from the beginning of the calendar year for which the tax rate is effective.

(c) Voluntary payments made within the time required will not be refunded unless a request is made in writing within 30 calendar days after sending of the notice of the new tax rate.

*[For text of subd 8, see M.S.2000]*

**History:** 2001 c 175 s 12-15

## **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 unemployment benefits charged to its reimbursable account under section 268.047. Payments in the amount of unemployment 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 unemployment benefits paid is sent pursuant to section 268.047, subdivision 6. 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 two 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. Upon election, the commissioner shall establish a reimbursable account for the state or political subdivision. A termination of election shall be allowed only if the state or political subdivision has, since the beginning of the experience rating period under section 268.051, subdivision 3, paid taxes and made voluntary payments under section 268.051, subdivision 7, equal to or more than 125 percent of the unemployment benefits used in

computing the experience rating. In addition, any unemployment benefits paid after the experience rating period shall be transferred to the new reimbursable account of the state or political subdivision. If the amount of taxes and voluntary payments paid since the beginning of the experience rating period exceeds 125 percent of the amount of unemployment benefits paid during the experience rating period, that amount in excess shall be applied against any unemployment benefits paid after the experience rating period.

(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 taxing 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.

*[For text of subds 3 and 4, see M.S.2000]*

Subd. 5. **Considered an election.** If the state of Minnesota or its political subdivisions choose not to be a taxing employer under subdivision 2, the state or its political subdivision shall be considered, for purposes of the Minnesota unemployment insurance program, to have elected to be liable for payments in lieu of taxes under subdivision 1.

**History:** 2001 c 175 s 16-18

## 268.0525 INDIAN TRIBES.

(a) An Indian tribe, as defined under United States Code, title 25, section 450b(e) of the Indian Self-Determination and Education Assistance Act, and any subdivision, subsidiary, or business enterprise owned by the Indian tribe, shall be treated the same as the state of Minnesota, or a political subdivision of the state, for all purposes of the Minnesota unemployment insurance program law.

(b) The Indian tribe may make separate elections under section 268.052, subdivision 2, for itself and each subdivision, subsidiary, or business enterprise wholly owned by the Indian tribe.

(c) If an Indian tribe, subdivision, subsidiary, or business enterprise wholly owned by the tribe, which has elected to be liable for payments in lieu of taxes, fails to make the required payments within 90 days of the notice of delinquency, the commissioner shall terminate the election to make payments in lieu of taxes as of the beginning of the next calendar year, unless all past due payments in lieu of taxes, and any interest and penalties, have been paid before the beginning of the next calendar year.

An Indian tribe, subdivision, subsidiary, or business enterprise wholly owned by the tribe that has its election terminated under this paragraph shall become a taxing employer and assigned the new employer tax rate under section 268.051, subdivision 5, until the tribe, subdivision, subsidiary, or business enterprise wholly owned by the Indian tribe qualifies for an experience rating under section 268.051, subdivision 3.

**History:** 2001 c 175 s 19

## 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 unemployment benefits charged to its reimbursable account under section 268.047.

The organization may elect to make payments in lieu of taxes for a period of not less than two 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. Upon election, the commissioner shall establish a reimbursable account for the nonprofit organization. An election shall be allowed only if the nonprofit organization has, since the beginning of the experience rating period under section 268.051, subdivision 3, paid taxes and made voluntary payments under section 268.051, subdivision 7, equal to or more than 125 percent of the unemployment benefits used in computing the experience rating. In addition, any unemployment benefits paid after the experience rating period shall be transferred to the new reimbursable account of the nonprofit organization. If the amount of taxes and voluntary payments paid since the beginning of the experience rating period exceeds 125 percent of the amount of unemployment benefits paid during the experience rating period, that amount in excess shall be applied against any unemployment benefits paid after the experience rating period. 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.

*[For text of subd 2, see M.S.2000]*

Subd. 3. **Payments.** (a) Payments in lieu of taxes, in the amount of unemployment 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 unemployment benefits paid 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.

*[For text of subds 4 and 5, see M.S.2000]*

**History:** 2001 c 175 s 20,21

## **268.058 LIEN, LEVY, SETOFF, AND CIVIL ACTION.**

Subdivision 1. **Lien.** (a) Any taxes, unemployment 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. 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.

*[For text of subds 2 to 5, see M.S.2000]*

**History:** 2001 c 195 art 2 s 10

## **268.059 GARNISHMENT FOR DELINQUENT TAXES AND UNEMPLOYMENT BENEFIT OVERPAYMENTS.**

**Subdivision 1. Notice.** The commissioner may give notice to any employer that an employee owes delinquent taxes, payments in lieu of taxes, or overpaid unemployment benefits, including penalties, interest, and costs, and that the obligation to the fund should be withheld from the employee's wages. The commissioner may proceed only if the tax, payment in lieu of taxes, or unemployment benefit overpayment is uncontested

or if the time for any appeal has expired. The commissioner shall not proceed until 30 calendar days after mailing to the debtor employee, at the debtor's last known address, a written notice of intent to garnish wages and exemption notice. That notice shall list:

- (1) the amount of taxes, payments in lieu of taxes, overpaid unemployment benefits, interest, penalties, or costs due from the debtor;
- (2) demand for immediate payment; and
- (3) the intention to serve a garnishment notice on the debtor's employer.

The notice shall expire 180 calendar days after it has been mailed to the debtor provided that the notice may be renewed by mailing a new notice that is in accordance with this section. The renewed notice shall have the effect of reinstating the priority of the original notice. The exemption notice shall be in substantially the same form as in section 571.72. The notice shall inform the debtor of the right to claim exemptions contained in section 550.37, subdivision 14. If no written claim of exemption is received by the commissioner within 30 calendar days after mailing of the notice, the commissioner may proceed with the garnishment. The notice to the debtor's employer may be served by mail and shall be in substantially the same form as in section 571.75.

**Subd. 2. Employer action.** (a) Upon receipt of the garnishment notice, the employer shall withhold from the earnings due or to become due to the employee, the amount shown on the notice plus accrued interest, subject to section 571.922. The employer shall continue to withhold each pay period the amount shown on the notice plus accrued interest until the garnishment notice is released by the commissioner. Upon receipt of notice by the employer, the claim of the commissioner shall have priority over any subsequent garnishments or wage assignments. The commissioner may arrange between the employer and employee for withholding a portion of the total amount due the employee each pay period, until the total amount shown on the notice plus accrued interest has been withheld.

The "earnings due" any employee is as defined in section 571.921.

(b) The maximum garnishment allowed for any one pay period shall be decreased by any amounts payable pursuant to any other garnishment action served prior to the garnishment notice, and any amounts covered by any irrevocable and previously effective assignment of wages; the employer shall give notice to the commissioner of the amounts and the facts relating to the assignment within ten days after the service of the garnishment notice on the form provided by the commissioner.

(c) Within ten calendar days after the expiration of the pay period, the employer shall remit to the commissioner, on a form and in the manner prescribed by the commissioner, the amount withheld during each pay period.

**Subd. 3. Discharge or discipline prohibited.** (a) If the employee ceases to be employed by the employer before the full amount set forth on the garnishment notice plus accrued interest has been withheld, the employer shall immediately notify the commissioner in writing of the termination date of the employee and the total amount withheld. No employer may discharge or discipline any employee because the commissioner has proceeded under this section. If an employer discharges an employee in violation of this section, the employee shall have the same remedy as provided in section 571.927, subdivision 2.

(b) This section shall apply if the employer is the state of Minnesota or any political subdivision.

(c) The commissioner shall refund to the employee any excess amounts withheld from the employee.

(d) An employer that fails or refuses to comply with this section shall be jointly and severally liable for the total amount due from the employee. Any amount due from the employer under this paragraph may be collected in accordance with section 268.058.

**History:** 2001 c 175 s 22

**268.07 BENEFIT ACCOUNT.**

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

(b) The commissioner shall examine each application for unemployment benefits to determine the base period and the benefit year, and based upon all the covered employment in the base period the commissioner shall determine the weekly unemployment benefit amount available, if any, and the maximum amount of unemployment 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 an amended determination if the commissioner finds that the determination was incorrect for any reason. An amended determination shall be promptly sent to the applicant and all base period employers, by mail or electronic transmission.

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

Subd. 2. **Benefit account requirements and weekly unemployment benefit amount and maximum amount of unemployment 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 unemployment 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  $66\frac{2}{3}$  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 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 unemployment benefit amount and the applicant's weekly unemployment benefit amount and maximum amount of unemployment benefits shall be rounded down to the next lowest whole dollar.

(d) The maximum amount of unemployment benefits available on any benefit account shall be the lower of:

- (1)  $33\frac{1}{3}$  percent of the applicant's total wage credits; or
- (2) 26 times the applicant's weekly unemployment benefit amount.

*[For text of subd 3, see M.S.2000]*

Subd. 3a. **Right of appeal.** (a) A determination or amended determination of benefit account shall be final unless an applicant or base period employer within 30

calendar days after the sending of the determination or amended determination files an appeal. Every determination or amended determination of 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 amended determination of 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 unemployment benefits was filed. Upon specific request of an applicant, an application for benefits may be backdated one calendar week prior to the Sunday of the week the application was actually filed. An application shall be backdated only if the applicant was unemployed throughout the period of the backdating. If an individual attempted to file an application for unemployment 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 unemployment 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 unemployment benefit amount on the new benefit account.

(c) An application for unemployment 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 unemployment benefits shall be available from the fund only for weeks occurring during the applicant's benefit year.

**History:** 2001 c 175 s 23-26

## 268.085 ELIGIBILITY REQUIREMENTS.

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

(1) the applicant has an active benefit account and has filed a continued request for unemployment benefits for that week pursuant to section 268.086;

(2) the applicant was able to work and was available for suitable employment, and was actively seeking suitable employment. The applicant's weekly unemployment benefit amount shall be reduced one-fifth for each day the applicant is unable to work or is unavailable for suitable employment.

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

This clause 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 unemployment 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 unemployment 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 unemployment 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 fails or refuses to provide information on an issue of eligibility required under section 268.101, subdivision 1, paragraph (a), or an issue of disqualification required under section 268.101, subdivision 1, paragraph (d);
- (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 unemployment 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 unemployment benefits, this clause shall not apply.

Subd. 3. **Deductible payments.** (a) An applicant shall not be eligible to receive unemployment 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 unemployment benefit amount in the form of:

(1) severance pay, bonus pay, vacation pay, sick pay, and any other money payments, except earnings under subdivision 5, and back pay under subdivision 6, paid by an employer because of, upon, or after separation from employment that are considered wages under section 268.035, subdivision 29, or United States Code, title 26, section 3121, clause (2) of the Federal Insurance Contribution Act. 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. This clause shall not apply to vacation pay paid by an employer upon permanent separation from employment;

(2) 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

(3) holiday pay.

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

Subd. 3a. **Workers' compensation and disability insurance offset.** (a) An applicant is not eligible to receive unemployment benefits for any week in which the applicant is receiving or has received compensation for loss of wages equal to or in excess of the applicant's weekly unemployment benefit amount under:

- (1) the workers' compensation law of this state;
- (2) the workers' compensation law of any other state or similar federal law; or
- (3) any insurance or fund paid in whole or in part by an employer.

(b) This subdivision shall not apply to an applicant who has a claim pending for loss of wages under paragraph (a); however, before unemployment benefits may be paid when a claim is pending, the issue of the applicant being able to work, as required under subdivision 1, clause (2), shall be determined under section 268.101, subdivision 3. If the applicant later receives compensation as a result of the pending claim, the applicant is subject to the provisions of paragraph (a) and the unemployment benefits paid shall be subject to recoupment by the commissioner to the extent that the compensation constitutes overpaid unemployment benefits.

(c) If the amount of compensation described under paragraph (a) for any week is less than the applicant's weekly unemployment benefit amount, unemployment benefits requested for that week shall be reduced by the amount of that compensation payment.

Subd. 4. **Social security benefits.** (a) Any applicant aged 62 or over shall be required to state when filing an application for unemployment benefits and when filing continued requests for unemployment 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 unemployment benefit amount 50 percent of the weekly equivalent of the primary social security old age or disability benefit the applicant has received, has filed for, or intends to file for, with respect to that week.

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

This paragraph shall not apply if the Social Security Administration approved the collecting of primary social security disability benefits each month the applicant was employed during the base period.

(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 unemployment benefits shall be considered overpaid those unemployment benefits under section 268.18, subdivision 1.

*[For text of subd 5, see M.S.2000]*

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 unemployment 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 unemployment 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 unemployment benefit overpayments resulting from the payment of the back pay; and

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

(c) Unemployment benefits paid the applicant shall be removed from the computation of the tax rate for taxpaying employers and removed from the reimbursable account for nonprofit and government employers that have elected to be liable for payments in lieu of taxes 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 unemployment 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, unless that subsequent employment is 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 unemployment 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 unemployment benefits for each week during the period between academic years or terms that the applicant filed a timely continued request for unemployment benefits, but unemployment 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).

*[For text of subds 8 to 13, see M.S.2000]*

**Subd. 13a. Leave of absence.** (a) An applicant on a voluntary leave of absence shall be ineligible for benefits for the duration of the leave of absence.

A leave of absence is voluntary when work that the applicant can then perform is available with the applicant's employer but the applicant chooses not to work.

(b) A period of vacation requested by the applicant, paid or unpaid, shall be considered a voluntary leave of absence. A vacation period assigned by an employer under: (1) a uniform vacation shutdown; (2) a collective bargaining agreement; or (3) an established employer policy, shall not be considered a voluntary leave of absence.

(c) A leave of absence shall not be considered a quit or a discharge from employment for purposes of section 268.095.

(d) An applicant who is on a paid leave of absence, whether the leave of absence is voluntary or involuntary, shall be ineligible for benefits for the duration of the leave.

(e) This subdivision shall apply to a leave of absence from a base period employer, an employer during the period between the end of the base period and the effective date of the benefit account, or an employer during the benefit year.

**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 usual occupation or of comparable employment.

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

(b) To be considered "available for suitable employment," a student must be willing to quit school to accept suitable employment.

(c) An applicant who is absent from the labor market area for personal reasons, other than to search for work, is not "available for suitable 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 suitable employment, is not "available for suitable employment." An applicant must be available for daytime employment, if suitable employment is performed during the daytime, even though the applicant previously worked the night shift.

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

*[For text of subd 16, see M.S.2000]*

**History:** 2001 c 175 s 27-35,52



**268.086 CONTINUED REQUEST FOR UNEMPLOYMENT 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 unemployment 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 biweekly 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. Upon specific request of an applicant, a benefit account may be reactivated effective up to two weeks prior to the week the applicant made contact with the department to reactivate.

*[For text of subds 2 to 6, see M.S.2000]*

Subd. 7. **In-person continued request for unemployment benefits.** The commissioner may require any applicant who has been designated to make a continued request for unemployment benefits 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 unemployment benefits form shall be completed and submitted by the applicant.

An applicant shall be ineligible for unemployment 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.

*[For text of subds 8 and 9, see M.S.2000]*

**History:** 2001 c 175 s 36,37

**268.095 DISQUALIFICATION PROVISIONS.**

Subdivision 1. **Quit.** An applicant who quit employment shall be disqualified from all unemployment 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 reemployment 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 unemployment benefits through the end of the week that includes the scheduled date of layoff;

(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; or

(8) domestic abuse of the applicant or the applicant's minor child, necessitated the applicant's quitting the employment. Domestic abuse shall be shown by one or more of the following:

(i) a court order for protection or other documentation of equitable relief issued by a court;

(ii) a police record documenting the domestic abuse;

(iii) documentation that the perpetrator of the domestic abuse has been convicted of the offense of domestic abuse;

(iv) medical documentation of domestic abuse; or

(v) documentation or certification of the domestic abuse provided by a social worker, member of the clergy, shelter worker, or other professional who has assisted the applicant in dealing with the domestic abuse.

Domestic abuse for purposes of this clause shall be defined under section 518B.01.

**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.

(d) An applicant who, without good cause, fails to affirmatively request an additional job assignment after completion of a temporary job assignment from a staffing service employer shall be considered to have quit employment.

This paragraph shall apply only if, at the time of beginning of employment with the staffing service employer, the applicant signed and was provided a copy of a separate document written in clear and concise language that informed the applicant of this paragraph and that unemployment benefits may be affected.

For purposes of this paragraph, "good cause" shall be a reason that is significant and would compel an average, reasonable worker, who would otherwise want an additional temporary job assignment with the staffing service employer, to fail to contact the staffing service employer. The applicant shall be considered to have good cause if the temporary job assignment just completed was not suitable employment for the applicant.

For purposes of this paragraph, a "staffing service employer" is an employer whose business involves employing individuals directly for the purpose of furnishing temporary help to clients of the staffing service.

*[For text of subs 3 and 4, see M.S.2000]*

Subd. 4a. [Renumbered subd 6a]

*[For text of subds 5 and 6, see M.S.2000]*

Subd. 6a. **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.

*[For text of subd 7, see M.S.2000]*

Subd. 8. **Offers of employment.** (a) An applicant shall be disqualified from all unemployment 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.

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

*[For text of subd 10, see M.S.2000]*

Subd. 11. **Application.** (a) This section shall apply to all covered employment, full time or part time, temporary or of limited duration, permanent or of indefinite duration, that occurred in Minnesota 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).

(b) Paragraph (a) shall also apply to employment covered under an unemployment insurance program of any other state or established by an act of Congress.

*[For text of subd 12, see M.S.2000]*

**History:** 2001 c 175 s 38-41,52

## **268.101 DETERMINATIONS ON DISQUALIFICATION AND ELIGIBILITY.**

Subdivision 1. **Notification.** (a) In an application for unemployment benefits, each applicant shall report the name and the reason for no longer working for the applicant's most recent employer, as well as the names of all employers and the reasons for no longer working for all employers during the six calendar months prior to the date of the application. 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 unemployment benefits under section 268.085. If the applicant fails or refuses to provide information necessary to determine the applicant's eligibility for benefits under section 268.085, the applicant shall be ineligible for benefits under section 268.085, subdivision 2, until the applicant provides this required information.

(b) Upon establishment of a benefit account, the commissioner shall notify, by mail or electronic transmission, all employers the applicant was required to report on the application and all base period employers and determined successors to those employers under section 268.051, subdivision 4 in order to provide the employer an opportunity 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 of disqualification within ten calendar days after sending of the notice, as provided for under subdivision 2, paragraph (b), may have on the employer under section 268.047.

(c) Each applicant shall report any employment, loss of employment, and offers of employment received, during those weeks the applicant filed continued requests for unemployment 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 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 unemployment 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 and provided an opportunity 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 under section 268.047.

(d) The purpose for requiring the applicant to report the name of employers and the reason for no longer working for those employers 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 unemployment 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, that shall raise an issue of disqualification and the applicant shall be required, as part of the determination process under subdivision 2, paragraph (a), to state all the facts about the cause for no longer working for the employer, if known. If the applicant fails or refuses to provide this information, the applicant shall be ineligible for benefits under section 268.085, subdivision 2, until the applicant provides this required information.

**Subd. 2. Disqualification determination.** (a) 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 determination of nondisqualification, as is appropriate. The determination shall state the effect on the employer under section 268.047. A determination shall be made pursuant to this paragraph even if a notified employer has not raised the issue of disqualification.

(b) The commissioner shall determine any 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 the employer under section 268.047.

If a base period employer:

(1) was not the applicant's most recent employer prior to the application for unemployment benefits;

(2) did not employ the applicant during the six calendar months prior to the application for unemployment benefits; and

(3) did not raise an issue of disqualification within ten calendar days of notification under subdivision 1, paragraph (b);

then any exception under section 268.047, subdivisions 2 and 3, shall begin the Sunday two weeks following the week that the issue of disqualification was raised by the employer.

(c) 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 the employer under section 268.047.

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

(d) 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.

(e) 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.

(f) 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 unemployment benefits under section 268.095, any question of an exception to disqualification under section 268.095, any question of effect on 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.

(g) 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.

*[For text of subd 3, see M.S.2000]*

**Subd. 3a. Direct hearing.** Regardless of any provision of the Minnesota Unemployment Insurance Program Law, the commissioner or an unemployment law 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.

*[For text of subds 4 to 6, see M.S.2000]*

**Subd. 7.** [Renumbered 268.19 subd 2]

**History:** 2001 c 175 s 42,43,52

## **268.105 HEARINGS; APPEALS.**

*[For text of subds 1 to 6, see M.S.2000]*

**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 subdivision 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. The commissioner may be represented by an attorney who is a classified employee of the department designated by the commissioner for that purpose.

**History:** 2001 c 175 s 44

#### **268.131 RECIPROCAL UNEMPLOYMENT 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 unemployment benefits on the basis of combining an applicant's wages and employment covered under this law with wages and employment covered under the unemployment insurance programs 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 unemployment 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 an unemployment insurance program 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 unemployment benefits under the Minnesota Unemployment Insurance Program Law.

Subd. 2. **Cooperation with foreign governments.** The commissioner is authorized to enter into or cooperate in arrangements whereby facilities and services provided under the Minnesota Unemployment Insurance Program Law and facilities and services provided under the unemployment insurance program of any foreign government, may be used for the taking of applications for unemployment benefits and continued requests and the payment of unemployment benefits under this law or under a similar law of a foreign government.

**History:** 2001 c 175 s 45,52

#### **268.145 INCOME TAX WITHHOLDING.**

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

- (1) unemployment 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 unemployment 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 ten 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 unemployment benefits paid after the election.

*[For text of subs 2 to 5, see M.S.2000]*

**History:** 1Sp2001 c 4 art 2 s 23

## **268.18 UNEMPLOYMENT BENEFIT OVERPAYMENTS.**

*[For text of subs 1 and 2, see M.S.2000]*

Subd. 2b. **Interest.** (a) On any unemployment benefits fraudulently obtained, and any penalty amounts assessed under subdivision 2, the commissioner may 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.

*[For text of subs 3a to 6, see M.S.2000]*

**History:** 2001 c 175 s 46

## **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 unemployment benefits illegally, the employer shall be penalized \$500 or the amount of unemployment 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 unemployment benefits to any applicant or to reduce or prevent the effects of unemployment benefits paid on its tax or reimbursable 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 electronic 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 unemployment

benefits to any applicant, is guilty of a gross misdemeanor unless the unemployment benefit underpayment exceeds \$500, in that case the individual is guilty of a felony.

**History:** 2001 c 175 s 47

### **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 the Minnesota unemployment insurance program and the job service.

(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:** 2001 c 175 s 52

### **268.19 DATA PRIVACY.**

Subdivision 1. **Use of data.** (a) Except as otherwise provided by this section, data gathered from any employer or individual pursuant to the administration of the Minnesota Unemployment Insurance Program Law 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 the Minnesota Unemployment Insurance Program Law; 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;

(10) the federal Immigration and Naturalization Service shall have access to data on specific individuals and specific employers provided the specific individual or specific employer is the subject of an investigation by that agency; and

(11) 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 the Minnesota unemployment insurance program and the job service 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.

**Subd. 2. 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 unemployment benefits under the Minnesota Unemployment Insurance Program Law.

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

**History:** 1996 c 417 s 21; 1997 c 66 s 55-58, 79; 1998 c 265 s 30; 1999 c 107 s 45, 66; 2000 c 343 s 4; 2001 c 175 s 52

## 268.192 PROTECTION OF RIGHTS.

**Subdivision 1. Waiver of rights void.** Any agreement by an individual to waive, release, or commute rights to unemployment benefits or any other rights under the Minnesota Unemployment Insurance Program Law shall be void. Any agreement by an employee to pay all or any portion of an employer's taxes, shall be void. No employer shall directly or indirectly make or require or accept any deduction from wages to pay the employer's taxes, require or accept any waiver of any right or in any manner obstruct or impede an application or continued request for unemployment benefits. Any employer or officer or agent of any employer who violates any portion of this subdivision shall, for each offense, be guilty of a misdemeanor.

*[For text of subd 2, see M.S.2000]*

**History:** 2001 c 175 s 48,52

#### 268.194 UNEMPLOYMENT INSURANCE PROGRAM TRUST FUND.

*[For text of subds 1 to 4, see M.S.2000]*

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 unemployment benefits, or (2) expenses incurred for the administration of the Minnesota unemployment insurance program and the job service pursuant to a specific appropriation by the legislature. Any money used for the payment of unemployment 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 the Minnesota unemployment insurance program and the job service 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 unemployment insurance program 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.

*[For text of subd 6, see M.S.2000]*

**History:** 2001 c 175 s 52

#### 268.196 ADMINISTRATION ACCOUNT.

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

- (1) all money received from the federal government to administer the Minnesota unemployment insurance program and the job service;
- (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 the Minnesota unemployment insurance program and the job service.

**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, is 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 the Minnesota unemployment insurance program and the job service, 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 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 the Minnesota unemployment insurance program and the job service.

(b) Whenever the commissioner spends money from the contingent account for the administration of the Minnesota unemployment insurance program and the job service 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 unemployment insurance program trust fund.

**History:** 2001 c 175 s 52

**268.198** [Renumbered 268.26]

## **268.20 REPRESENTATION IN COURT.**

In any civil action to enforce the provisions of the Minnesota Unemployment Insurance Program Law, the commissioner shall be represented by the attorney general.

**History:** 2001 c 175 s 52

## **268.22 SAVING CLAUSE.**

The legislature reserves the right to amend or repeal all or any part of the Minnesota Unemployment Insurance Program Law at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights,

privileges, or immunities conferred thereby, or by acts done pursuant thereto, shall exist subject to the power of the legislature to amend or repeal these sections at any time.

**History:** 2001 c 175 s 52

### 268.23 SEVERABLE.

In the event that the United States Department of Labor determines that any provision of the Minnesota Unemployment Insurance Program Law, or any other provision of Minnesota Statutes relating to the unemployment insurance 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:** 2001 c 175 s 52

### 268.26 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 administration account and expended solely for the maintenance of state public job service offices. For the purpose of establishing and maintaining 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:** Ex1936 c 2 s 12; 1937 c 306 s 9; 1939 c 443 s 11; 1941 c 554 s 11; 1945 c 376 s 11; 1949 c 605 s 11; 1969 c 567 s 3; 1973 c 254 s 3; 1977 c 151 s 1; 1977 c 430 s 25 subd 1; 1980 c 350 s 1; 1983 c 216 art 1 s 87; 1Sp1985 c 14 art 9 s 75; 1989 c 209 art 2 s 1; 1994 c 483 s 1; 1996 c 417 s 31; 1997 c 66 s 65,79; 1998 c 265 s 44; 1999 c 107 s 62,66; 2001 c 175 s 52

### 268.29 JUVENILE JUSTICE PROGRAM.

The governor shall designate the department of economic security as the sole agency responsible for supervising the preparation and administration of the state plan for juvenile justice required by the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

The governor shall designate the juvenile justice advisory committee as the supervisory board for the department of economic security with respect to preparation and administration of the state plan and award of grants.

The governor shall appoint members to the juvenile justice advisory committee in accordance with the membership requirements of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. Section 15.059, subdivision 3, governs the compensation of the members.

**History:** 2001 c 161 s 51

### 268.665 WORKFORCE DEVELOPMENT COUNCIL.

*[For text of subds 1 and 2, see M.S.2000]*

Subd. 3. **Purpose; duties.** The governor's workforce development council shall replace the governor's job training council and assume all of its requirements, duties,

and responsibilities, under the Job Training Partnership Act, United States Code, title 29, section 1501, et seq. Additionally, the workforce development council shall assume the following duties and responsibilities:

(a) Coordinate the development, implementation, and evaluation of the statewide education and employment transitions system under section 124D.46. Beginning January 1, 1997, the council shall also coordinate the development, implementation, and evaluation of the Minnesota youth services programs under sections 124D.39 to 124D.44, and the National and Community Services Act of 1993, United States Code, title 42, section 12501, et seq.

(b) Review the provision of services and the use of funds and resources under applicable federal human resource programs and advise the governor on methods of coordinating the provision of services and the use of funds and resources consistent with the laws and regulations governing the programs. For purposes of this section, applicable federal and state human resource programs mean the:

(1) Job Training Partnership Act, United States Code, title 29, section 1501, et seq.;

(2) Carl D. Perkins Vocational and Applied Technology Education Act, United States Code, title 20, section 2301, et seq.;

(3) National and Community Service Act of 1993, United States Code, title 42, section 12501, et seq.;

(4) Adult Education Act, United States Code, title 20, section 1201, et seq.;

(5) Wagner-Peyser Act, United States Code, title 29, section 49;

(6) Social Security Act, title IV, part F, (JOBS), United States Code, title 42, section 681, et seq.;

(7) Food Stamp Act of 1977, United States Code, title 7, section 6(d)(4), Food Stamp Employment and Training Program, United States Code, title 7, section 2015(d)(4);

(8) programs defined in section 268.0111, subdivision 5; and

(9) School to Work Opportunity Act of 1994, Public Law Number 103-239.

Additional federal and state programs and resources can be included within the scope of the council's duties if recommended by the governor after consultation with the council.

(c) Review federal, state, and local education, post-secondary, job skills training, and youth employment programs, and make recommendations to the governor and the legislature for establishing an integrated seamless system for providing education, service-learning, and work skills development services to learners and workers of all ages.

(d) Advise the governor on the development and implementation of statewide and local performance standards and measures relating to applicable federal human resource programs and the coordination of performance standards and measures among programs.

(e) Develop program guidelines and recommend grant approval procedures to the department of children, families, and learning for grants to local education and employment transition partnerships, including implementation grants under section 124D.46, grants for youth apprenticeship programs under section 124D.47, and youth employer grants; and

(1) coordinate implementation of the education and employment transitions system under section 124D.46;

(2) promote education and employment transitions programs and knowledge and skills of entrepreneurship among employers, workers, youth, and educators, and encourage employers to provide meaningful work-based learning opportunities;

(3) evaluate and identify exemplary education and employment transitions programs and provide technical assistance to local partnerships to replicate the programs throughout the state;

(4) establish a performance-based quality assurance system for consistent statewide evaluation of the performance of the education and employment transitions system at both the state and local level;

(5) conduct an annual review of each local education and employment transitions partnership to ensure it adequately meets the quality assurance standards established as part of the state quality assurance system;

(6) develop the methods to assess local partnership effectiveness;

(7) annually publish a report on the findings of the evaluations of each local education transitions partnership;

(8) promote knowledge and skills of entrepreneurship among students in kindergarten through grade 12 by sharing information about the ways new business development contributes to a strong economy.

(f) Advise the governor on methods to evaluate applicable federal human resource programs.

(g) Sponsor appropriate studies to identify human investment needs in Minnesota and recommend to the governor goals and methods for meeting those needs.

(h) Recommend to the governor goals and methods for the development and coordination of a human resource system in Minnesota.

(i) Examine federal and state laws, rules, and regulations to assess whether they present barriers to achieving the development of a coordinated human resource system.

(j) Recommend to the governor and to the federal government changes in state or federal laws, rules, or regulations concerning employment and training programs that present barriers to achieving the development of a coordinated human resource system.

(k) Recommend to the governor and to the federal government waivers of laws and regulations to promote coordinated service delivery.

(l) Sponsor appropriate studies and prepare and recommend to the governor a strategic plan which details methods for meeting Minnesota's human investment needs and for developing and coordinating a state human resource system.

Subd. 3a. **Executive committee duties.** The executive committee must, with advice and input of local workforce councils and other stakeholders as appropriate, develop performance standards for the state workforce centers. By January 15, 2002, and each odd-numbered year thereafter, the executive committee shall submit a report to the senate and house committees with jurisdiction over workforce development programs regarding the performance and outcomes of the workforce centers. The report must provide recommendations regarding workforce center funding levels and sources, program changes, and administrative changes.

*[For text of subds 4 to 6, see M.S.2000]*

**History:** 2001 c 79 s 4; 1Sp2001 c 4 art 2 s 24

**268.6715** [Repealed, 2001 c 79 s 8]

NOTE: This section was also amended by Laws 2001, chapter 175, section 49, to read as follows:

"268.6715 1997 Minnesota employment and economic development program.

The 1997 Minnesota employment and economic development program is established to assist businesses and communities to create jobs that provide the wages, benefits, and on-the-job training opportunities necessary to help low-wage workers and people transitioning from public assistance to get and retain jobs, and to help their families to move out of poverty. Employment obtained under this program is not included in the definition of "noncovered employment" by section 268.035, subdivision 20, clause (11)."

**268.672** [Repealed, 2001 c 79 s 8]

**268.673** [Repealed, 2001 c 79 s 8]

**268.6751** [Repealed, 2001 c 79 s 8]

**268.677** [Repealed, 2001 c 79 s 8]

**268.681** [Repealed, 2001 c 79 s 8]

**268.6811** [Repealed, 2001 c 79 s 8]

**268.682** [Repealed, 2001 c 79 s 8]

**268.85** [Repealed, 2001 c 79 s 8]

**268.86 EMPLOYMENT AND TRAINING PROGRAMS.**

*[For text of subds 2 and 6, see M.S.2000]*

Subd. 8. [Repealed, 2001 c 79 s 8]

*[For text of subd 10, see M.S.2000]*

**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. As of July 1, 1998, employment and training services may 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 if the county requests that they 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; and MFIP employment services.

(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, nonduplicative services, including outreach, assessments, identification of client barriers, employability development plans, and provision or referral to support services.

Subd. 1a. **Decertification.** (a) The department, on its own initiative, or at the request of the local service unit, shall begin decertification processes for employment and training service providers who:

- (1) no longer meet one or more of the certification standards;
- (2) are delivering services in a manner that does not comply with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law Number 104-193, or relevant state law after corrective actions have been cited, technical assistance has been provided, and a reasonable period of time for remedial action has been provided; or
- (3) are not complying with other state and federal laws or policy which are necessary for effective delivery of services.

(b) The initiating of decertification processes shall not result in decertification of the service provider unless and until adequate fact-finding and investigation has been performed by the department.

Subd. 2. [Repealed, 2001 c 79 s 8]

*[For text of subd 3, see M.S.2000]*

Subd. 4. [Repealed, 2001 c 79 s 8]

**History:** 2001 c 79 s 5,6

## **268.88 LOCAL SERVICE UNIT PLANS.**

(a) By April 15, 1999, and by April 15 of each second year thereafter, local service units shall prepare and submit to the commissioner a plan that covers the next two state fiscal years. At least 30 days prior to submission of the plan, the local service unit shall solicit comments from the public on the contents of the proposed plan. The commissioner shall notify each local service unit within 60 days of receipt of its plan that the plan has been approved or disapproved. The plan must include:

(1) a statement of objectives for the employment and training services the local service unit administers;

(2) the establishment of job placement and job retention goals, the establishment of public assistance caseload reduction goals, and the strategies and programs that will be used to achieve these goals;

(3) a statement of whether the goals from the preceding year were met and an explanation if the local service unit failed to meet the goals;

(4) the amount proposed to be allocated to each employment and training service;

(5) the proposed types of employment and training services the local service unit plans to utilize;

(6) a description of how the local service unit will use funds provided under chapter 256J to meet the requirements of that chapter. The description must include what services will be provided, per service expenditures, an estimate of how many employment and training slots the local service unit will provide, how many dollars the local service unit will provide per slot per provider, how many participants per slot, an estimate of the ratio of participants per job counselor, and proposed uses for any residual funds not included in slot allocations to providers;

(7) a report on the use of wage subsidies, grant diversions, community investment programs, and other services administered under this chapter;

(8) a performance review of the employment and training service providers delivering employment and training services for the local service unit;

(9) a copy of any contract between the local service unit and an employment and training service provider including expected outcomes and service levels for public assistance clients;

(10) a copy of any other agreements between educational institutions, family support services, and child care providers; and

(11) a description of how the local service unit ensures compliance with section 256J.06, requiring community involvement in the administration of MFIP.

(b) In counties with a city of the first class, the county and the city shall develop and submit a joint plan. The plan may not be submitted until agreed to by both the city and the county. The plan must provide for the direct allocation of employment and training money to the city and the county unless waived by either. If the county and the city cannot concur on a plan, the commissioner shall resolve their dispute. In counties in which a federally recognized Indian tribe is operating an employment and training program under an agreement with the commissioner of human services, the plan must provide that the county will coordinate its employment and training programs, including developing a system for referrals, sanctions, and the provision of supporting services such as access to child care funds and transportation with programs operated by the Indian tribe. The plan may not be given final approval by the commissioner until the



tribal unit and county have submitted written agreement on these provisions in the plan. If the county and Indian tribe cannot agree on these provisions, the local service unit shall notify the commissioner of economic security and the commissioners of economic security and human services shall resolve the dispute.

(c) The commissioner may withhold the distribution of employment and training money from a local service unit that does not submit a plan to the commissioner by the date set by this section, and shall withhold the distribution of employment and training money from a local service unit whose plan has been disapproved by the commissioner until an acceptable amended plan has been submitted.

(d) Beginning April 15, 1992, and by April 15 of each second year thereafter, local service units must prepare and submit to the commissioner an interim year plan update that deals with performance in that state fiscal year and changes anticipated for the second year of the biennium. The update must include information about employment and training programs addressed in the local service unit's two-year plan and shall be completed in accordance with criteria established by the commissioner.

**History:** 2001 c 79 s 7

**268.90** [Repealed, 2001 c 79 s 8]

**268.971** [Repealed, 2001 c 79 s 8]

**268.975** [Repealed, 1Sp2001 c 4 art 2 s 41]

**268.976** [Repealed, 1Sp2001 c 4 art 2 s 41]

**NOTE:** Subdivision 1 was also amended by Laws 2001, chapter 175, section 50, to read as follows:

"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 unemployment taxes, 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 experience large losses in employment. The commissioner may request information and other assistance from other state agencies for the purposes of this subdivision."

**268.9771** [Repealed, 1Sp2001 c 4 art 2 s 41]

**268.978** [Repealed, 1Sp2001 c 4 art 2 s 41]

**268.9781** [Repealed, 1Sp2001 c 4 art 2 s 41]

**268.9782** [Repealed, 1Sp2001 c 4 art 2 s 41]

**268.9783** [Repealed, 1Sp2001 c 4 art 2 s 41]

**268.979** [Repealed, 1Sp2001 c 4 art 2 s 41]

**268.98** [Repealed, 1Sp2001 c 4 art 2 s 41]