

## Economic Security

## CHAPTER 268

## UNEMPLOYMENT INSURANCE

268.001	Citation; Minnesota Unemployment Insurance Law.	268.07	Benefit account.
268.03	Public purpose of the Minnesota unemployment insurance program.	268.084	Personal identification number; presumption.
268.032	Electronic transmission; when allowed; sending to last known address required.	268.085	Eligibility requirements.
268.033	Computation of time.	268.086	Continued biweekly request for unemployment benefits on an active benefit account.
268.035	Definitions.	268.087	Unemployment benefits due deceased persons.
268.042	Employers coverage.	268.095	Disqualification provisions.
268.0425	Electronic transaction presumption.	268.101	Determinations on disqualification and eligibility.
268.043	Determinations of coverage.	268.103	Appeals by electronic transmission.
268.044	Wage reporting.	268.105	Appeals.
268.045	Employer tax or reimbursable accounts.	268.115	Extended unemployment benefits.
268.047	Effect on an employer of unemployment benefits paid.	268.125	Additional unemployment benefits.
268.051	Employers taxes.	268.131	Reciprocal unemployment benefit arrangements.
268.0511	Annual payment of small liabilities.	268.135	Shared work plan.
268.052	Payment to trust fund by state and political subdivisions.	268.145	Income tax withholding.
268.0525	Indian tribes.	268.155	Child support deducted from unemployment benefits.
268.053	Payment to trust fund by nonprofit organizations.	268.18	Unemployment benefit overpayments.
268.057	Collection of taxes.	268.182	Applicant's false representations; concealment of facts; penalty.
268.058	Lien, levy, setoff, and civil action.	268.184	Employer misconduct; penalty.
268.059	Garnishment for delinquent taxes and unemployment benefit overpayments.	268.186	Records; audits.
268.0625	Revocations of business licenses.	268.188	Subpoenas; oaths.
268.063	Personal liability.	268.19	Data privacy.
268.064	Liability for debts upon acquisition.	268.192	Protection of rights.
268.065	Liability of amounts due from subcontractors and employee leasing firms.	268.194	Unemployment insurance trust fund.
268.066	Cancellation of amounts due from an employer.	268.196	Administration account.
268.067	Compromise.	268.20	Representation in court.
268.0675	No election of remedy.	268.21	Nonliability of state.
268.068	Notice to workers.	268.22	Saving clause.
268.069	Payment of unemployment benefits.	268.23	Severable.

**268.001 CITATION; MINNESOTA UNEMPLOYMENT INSURANCE LAW.**

This chapter shall be known and may be cited as the "Minnesota Unemployment Insurance Law."

**History:** 1987 c 385 s 47; 1994 c 483 s 1; 2004 c 206 s 38

**268.01** [Repealed, 1965 c 45 s 73]

**268.011** [Repealed, 1Sp1985 c 14 art 9 s 78 subd 1]

**268.0111** Subdivision 1. [Repealed, 2004 c 206 s 53]

Subd. 2. [Repealed, 2004 c 206 s 53]

Subd. 3. [Repealed, 1987 c 403 art 2 s 164]

Subd. 3a. [Repealed, 2004 c 206 s 53]

Subd. 4. [Renumbered 116L.19, subd 4]

Subd. 4a. [Repealed, 2004 c 206 s 53]

Subd. 5. [Renumbered 116L.19, subd 5]

Subd. 5a. [Renumbered 116L.19, subd 6]

Subd. 6. [Renumbered 116L.19, subd 7]

Subd. 7. [Renumbered 116L.19, subd 8]

Subd. 8. [Renumbered 116L.19, subd 9]

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

**268.012** [Repealed, 1Sp1985 c 14 art 9 s 78 subd 1]

**268.0121** Subdivision 1. [Repealed, 2004 c 206 s 53]

Subd. 2. [Repealed, 2004 c 206 s 53]

Subd. 3. [Renumbered 116J.01, subd 6]

Subd. 4. [Renumbered 116J.035, subd 4]

Subd. 5. [Renumbered 116J.035, subd 6]

**268.0122** Subdivision 1. [Renumbered 116J.401, subdivision 1]

Subd. 2. [Repealed, 2004 c 206 s 53]

Subd. 3. [Repealed, 2004 c 206 s 53]

Subd. 4. [Renumbered 116J.035, subd 5]

Subd. 5. [Repealed, 2004 c 206 s 53]

Subd. 6. [Repealed, 2004 c 206 s 53]

Subd. 7. [Renumbered 116J.401, subd 3]

**268.0124** [Renumbered 116J.0124]

**268.0125** [Renumbered 116J.0125]

**268.013** [Repealed, 1Sp1985 c 14 art 9 s 78 subd 1]

**268.014** [Renumbered 116J.014]

**268.02** [Repealed, 1965 c 45 s 73]

**268.021** [Repealed, 1999 c 107 s 67]

**268.022** [Renumbered 116L.20]

**268.025** [Repealed, 1965 c 45 s 73]

**268.026** [Repealed, 1997 c 66 s 81]

**268.027** [Repealed, 2004 c 206 s 53]

**268.028** [Repealed, 2004 c 206 s 53]

**268.029** [Repealed, 2004 c 206 s 53]

### **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 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:** (4337-21) Ex1936 c 2 s 1; 1989 c 209 art 2 s 1; 1994 c 488 s 1; 1997 c 7 art 1 s 105; 1998 c 265 s 3; 1999 c 107 s 66; 2000 c 343 s 1; 2001 c 175 s 2,52; 1Sp2003 c 3 art 2 s 20

**268.032 ELECTRONIC TRANSMISSION; WHEN ALLOWED; SENDING TO LAST KNOWN ADDRESS REQUIRED.**

(a) If any required notice, determination, or decision issued under this chapter provides that the commissioner may send the notice, determination, or decision by mail or electronic transmission, the commissioner may send the notice, determination, or decision to an applicant or employer by electronic transmission only if the applicant or employer has affirmatively indicated that the applicant or employer would prefer required notices, determinations, or decisions be sent by electronic transmission rather than by mail. An applicant or employer may withdraw an indicated preference for electronic transmission.

(b) If any required notice, determination, or decision issued under this chapter is sent by mail to an applicant or an employer, the notice, determination, or decision must be sent to the last known address. If any required notice, determination, or decision issued under this chapter is sent by electronic transmission, the notice, determination, or decision must be sent to the last known electronic address of the applicant or employer. If any required notice, determination, or decision issued under this chapter is sent by electronic transmission and the commissioner is notified that the electronic address of the applicant or employer is no longer in service, the commissioner must then send the required notice, determination, or decision by mail to the last known address.

**History:** 2004 c 183 s 2

**NOTE:** This section, as added by Laws 2004, chapter 183, section 2, is effective July 1, 2005. Laws 2004, chapter 183, section 2, the effective date.

**268.033 COMPUTATION OF TIME.**

The computation of time provisions of section 645.151 apply to this chapter.

**History:** 2004 c 183 s 3

**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 Law, have the meaning stated.

Subd. 2. **Agricultural employment.** "Agricultural employment" means services:

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

(2) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of the farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a tornado-like storm, if the major part of the employment is performed on a farm;

(3) in connection with the production or harvesting of any commodity defined as an agricultural product in United States Code, title 7, section 1626 of the Agricultural Marketing Act, or in connection with cotton ginning, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(4) in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if the operator produced more than one-half of the commodity with respect to which the employment is performed, or in the employ of

a group of operators of farms or a cooperative organization of which the operators are members, but only if the operators produced more than one-half of the commodity with respect to which the employment is performed; however, this clause shall not be applicable to employment performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or

(5) on a farm operated for profit if the employment is not in the course of the employer's trade or business.

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

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.

Subd. 3. **Back pay.** "Back pay" means a retroactive payment of money by an employer to an employee or former employee for lost wages.

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]

Subd. 6. **Benefit year.** "Benefit year" means the period of 52 calendar weeks beginning the date a benefit account is effective. For a benefit account established

effective any January 1, April 1, July 1, October 1, or January 2, 2000, or October 2, 2011, the benefit year will be a period of 53 calendar weeks.

Subd. 7. **Calendar quarter.** "Calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31.

Subd. 8. [Renumbered subd 2a]

Subd. 8a. **Commissioner.** "Commissioner" means the commissioner of employment and economic development.

Subd. 9. **Construction/independent contractor.** A worker doing commercial or residential building construction or improvement, in the public or private sector, performing services in the course of the trade, business, profession, or occupation of the employer, shall be considered an employee and not an "independent contractor" unless the worker meets all the following conditions:

- (1) maintains a separate business with the independent contractor's own office, equipment, materials, and other facilities;
- (2) holds or has applied for a federal employer identification number;
- (3) operates under contracts to perform specific services or work for specific amounts of money under which the independent contractor controls the means of performing the services or work;
- (4) incurs the main expenses related to the service or work that the independent contractor performs under contract;
- (5) is responsible for the satisfactory completion of work or services that the independent contractor contracts to perform and is liable for a failure to complete the work or service;
- (6) receives compensation for work or service performed under a contract on a commission or per job or competitive bid basis and not on any other basis;
- (7) may realize a profit or suffer a loss under contracts to perform work or service;
- (8) has continuing or recurring business liabilities or obligations; and
- (9) the success or failure of the independent contractor's business depends on the relationship of business receipts to expenditures.

Subd. 10. **Corporation.** "Corporation" includes associations, joint-stock companies, and insurance companies. This definition shall not be exclusive.

Subd. 11. **Covered agricultural employment.** "Covered agricultural employment" means agricultural employment where:

- (1) The employment is performed for a person who:
  - (i) during any calendar quarter in either the current or the prior calendar year paid wages of \$20,000 or more to employees in agricultural employment; or
  - (ii) for some portion of a day in each of 20 different calendar weeks, whether or not the weeks were consecutive, in either the current or prior calendar year employed in agricultural employment four or more employees, regardless of whether they were employed at the same time.
- (2) Any employee who is a member of a crew furnished by a crew leader to be employed in agricultural employment for any other person shall be treated as an employee of the crew leader:
  - (i) if the crew leader holds a valid certificate of registration under United States Code, title 29, section 1802, the Migrant and Seasonal Agricultural Worker Protection Act; or substantially all of the members of the crew operate or maintain tractors, mechanized harvesting or crop dusting equipment, or any other mechanized equipment, that is provided by the crew leader; and
  - (ii) if the employee is not an employee of another person.
- (3) Any employee who is furnished by a crew leader to be employed in agricultural employment for any other person and who is not treated as an employee of the crew leader under clause (2):

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

(ii) the other person shall be treated as having paid wages to the employee in an amount equal to the amount of wages paid to the employee by the crew leader (either on the crew leader's behalf or on behalf of the other person) for the agricultural employment performed for the other person.

(4) The term "crew leader" means an individual who:

(i) furnishes employees to be employed in agricultural employment for any other person;

(ii) pays (either on the crew leader's own behalf or on behalf of the other person) the employees furnished by the crew leader for the agricultural employment performed by them; and

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

(5) Employment of an officer or shareholder of a family farm corporation shall be excluded from covered agricultural employment unless the corporation is an employer under United States Code, title 26, section 3306(a)(2) of the Federal Unemployment Tax Act.

(6) Employment of an individual 16 years of age or under shall be excluded from covered agricultural employment unless the employer is an employer under United States Code, title 26, section 3306(a)(2) of the Federal Unemployment Tax Act.

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

(1) an employee's entire employment if:

(i) the employment is performed entirely in Minnesota;

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

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

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

(i) the employment is not covered under the unemployment insurance program of any other state or Canada; and

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

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

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

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

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

(iv) an "American employer," for the purposes of this subdivision, means an individual who is a resident of the United States, or a partnership if two-thirds or more

of the partners are residents of the United States, or a trust, if all of the trustees are residents of the United States, or a corporation organized under the laws of the United States, or of any state; or

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

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

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

Subd. 12a. **Department.** "Department" means the Department of Employment and Economic Development.

Subd. 12b. **Electronic transmission.** "Electronic transmission" means a communication sent by electronic, digital, magnetic, wireless, optical, electromagnetic or similar capabilities, and, when permitted by the commissioner, a telephone communication.

Subd. 13. **Employee.** "Employee" means every individual, who is performing, or has performed services for an employer in employment.

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 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.

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

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

(2) an officer of a corporation;

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

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

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

(ii) a traveling or city salesperson, other than as an agent-driver or commission-driver, engaged full-time in the solicitation on behalf of the person, of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

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

Subd. 16. **Family farm corporation.** "Family farm corporation" has the meaning given to it in section 500.24, subdivision 2.

Subd. 17. **Filing; filed.** "Filing" or "filed" means the delivery of any document to the commissioner or any of the commissioner's agents, or the depositing of the document in the United States mail properly addressed to the department with postage prepaid, in which case the document shall be considered filed on the day indicated by the cancellation mark of the United States Postal Service.

If, where allowed, an application, protest, appeal, or other required action is made by electronic transmission, it shall be considered filed on the day received by the department.

Subd. 18. [Renumbered subd 25a]

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

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

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

(2) employment for 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 of a corporate officer, if the officer owns 25 percent or more of the employer corporation, and employment of a member of a limited liability company, if the member owns 25 percent or more of the employer limited liability company;

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

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

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

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

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

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

Subd. 21. **Person.** "Person" means an individual, trust or estate, a partnership or a corporation.

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

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

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

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

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

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

(b) Full-time training provided through the dislocated worker program, the Trade Act of 1974, as amended, or the North American Free Trade Agreement shall be

considered "reemployment assistance training," if that training course is in accordance with the requirements of that program.

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

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

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

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

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

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

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

(c) For purposes of calculating the state's maximum weekly unemployment benefit amount available on any benefit account under section 268.07, subdivision 2, the state's average weekly wage shall apply to the one-year period beginning the first Sunday in August of the calendar year of the calculation.

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

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

If prospects are unfavorable, employment at lower skill or wage levels is suitable if the applicant is reasonably suited for the employment considering the applicant's education, training, work experience, and current physical and mental ability.

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

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

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

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

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

(g) Employment shall not be considered suitable if:

- (1) the position offered is vacant because of a labor dispute;
- (2) the wages, hours, or other conditions of employment are substantially less favorable than those prevailing for similar employment in the labor market area; or
- (3) as a condition of becoming employed, the applicant would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

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

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

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

Subd. 25a. **Trust fund.** "Trust fund" means the Minnesota unemployment insurance trust fund established by section 268.194.

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

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

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

Subd. 28. **Wage detail report.** "Wage detail report" means the report on each employee in covered employment required from an employer on a calendar quarter basis under section 268.044.

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 trust 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.

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

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

Subd. 31. **Week.** "Week" means calendar week, ending at midnight Saturday.

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

**History:** 1998 c 265 s 4; 1999 c 107 s 2-15,66; 2000 c 343 s 4; 2001 c 175 s 3-8,52; 1Sp2003 c 3 art 2 s 1,2,20; 2004 c 183 s 4-12

**NOTE:** The amendment to subdivision 28 by Laws 2004, chapter 183, section 12, is effective July 1, 2005. Laws 2004, chapter 183, section 12, the effective date.

**268.04** [Repealed, 1998 c 265 s 46]

**268.041** [Renumbered 268.043]

## **268.042 EMPLOYERS COVERAGE.**

Subdivision 1. **Employer registration.** (a) Each employer shall, upon or before the submission of its first wage detail report under section 268.044, register with the commissioner for a tax account or a reimbursable account, by electronic transmission in a format prescribed by the commissioner. The employer must provide all required information for registration.

(b) Except as provided in subdivision 3, any organization or person that is or becomes an employer subject to the Minnesota Unemployment Insurance Law within any calendar year shall be considered to be subject to this chapter the entire calendar year.

(c) Upon the termination of business, an employer that has been assigned a tax account or reimbursable account shall notify the commissioner by electronic transmission, in a format prescribed by the commissioner, that the employer no longer has employees and does not intend or expect to pay wages to any employees in the next

calendar year and into the foreseeable future. Upon such notification, the commissioner shall not require the employer to file wage detail reports under section 268.044, subdivision 1, paragraph (d), commencing the calendar quarter after the notice of termination was received by the commissioner.

Subd. 2. [Repealed, 1998 c 265 s 46]

Subd. 3. **Election to have noncovered employment considered covered employment.**

(a) Any employer that has employment performed for it that is noncovered employment under section 268.035, subdivision 20, may file with the commissioner, by electronic transmission in a format prescribed by the commissioner, an election that all such employment, in one or more distinct establishments or places of business, shall be considered covered employment for not less than two calendar years. The commissioner shall have discretion on the approval of any election. Upon the approval of the commissioner, sent by mail or electronic transmission, the employment shall constitute covered employment beginning the calendar quarter after the date of approval or beginning a later calendar quarter if requested by the employer. The employment shall cease to be considered covered employment as of the first day of January of any calendar year only if at least 30 calendar days prior to the first day of January the employer has filed with the commissioner, by electronic transmission in a format prescribed by the commissioner, a notice to that effect.

(b) The commissioner must terminate any election agreement under this subdivision upon 30 calendar days' notice sent by mail or electronic transmission, if the employer is delinquent on any taxes due or reimbursements due the trust fund.

Subd. 4. **Authorization.** The commissioner is authorized to enter into reciprocal arrangements with other states and the federal government, or both, whereby employment by an employee or employees for a single employer that is customarily performed in more than one state shall be considered performed entirely within any one of the states:

- (1) where any part of the employee's employment is performed, or
- (2) where the employee has a residence, or

(3) where the employer maintains a place of business; provided, there is in effect, as to the employment, an election, approved by the state, pursuant to which all the employment by the employee or employees for the employer is considered to be performed entirely within that state.

**History:** *Ex1936 c 2 s 9,11; 1937 c 306 s 6,8; 1939 c 443 s 9; 1941 c 554 s 8,10; 1943 c 650 s 8; 1945 c 376 s 8,10; 1947 c 432 s 8-10; 1947 c 600 s 2; 1949 c 605 s 10; 1953 c 97 s 13,14; 1965 c 45 s 41,45; 1969 c 9 s 64; 1969 c 854 s 9,10; 1971 c 942 s 13; 1979 c 181 s 16; 1983 c 372 s 35,36; 1986 c 444; 1989 c 209 art 2 s 1; 1996 c 417 s 31; 1997 c 66 s 61,79; 1998 c 265 s 5,6,33-35,45; 1999 c 107 s 16; 2001 c 175 s 9,52; 1Sp2003 c 3 art 2 s 20; 2004 c 183 s 13,14*

**NOTE:** The amendments to subdivisions 1 and 3 by Laws 2004, chapter 183, sections 13 and 14, are effective July 1, 2005. Laws 2004, chapter 183, sections 13 and 14, the effective dates.

## 268.0425 ELECTRONIC TRANSACTION PRESUMPTION.

If any electronic transaction is done under this chapter using an identification number or code assigned an employer by the commissioner, the transaction is presumed as done by that employer unless a preponderance of the available evidence displays clearly that it was not done by that employer.

**History:** *2004 c 183 s 15,86*

## 268.043 DETERMINATIONS OF COVERAGE.

(a) The commissioner, upon the commissioner's own motion or upon application of an organization or person, shall determine if that organization or person is an employer or whether services performed for it constitute employment and covered employment, or whether the compensation for services constitutes wages, and shall notify the organization or person of the determination. The determination shall be final

unless the organization or person, within 30 calendar days after sending of the determination by mail or electronic transmission, files a protest. Upon receipt of a protest, the commissioner shall review all available evidence and determine whether an error has been made. The commissioner shall send to the organization or person, by mail or electronic transmission, an affirmation or redetermination. The affirmation or redetermination shall be final unless, within 30 calendar days after sending of the affirmation or redetermination to the organization or person by mail or electronic transmission, an appeal is filed. Proceedings on the appeal shall be conducted in accordance with section 268.105.

(b) No organization or person shall be initially determined an employer, or that services performed for it were in employment or covered employment, for periods more than four years prior to the year in which the determination is made, unless the commissioner finds that there was fraudulent action to avoid liability under this chapter.

**History:** 1995 c 54 s 2; 1996 c 417 s 4; 1997 c 66 s 79; 1998 c 265 s 7; 2004 c 183 s 16

**NOTE:** The amendment to this section by Laws 2004, chapter 183, section 16, is effective July 1, 2005. Laws 2004, chapter 183, section 16, the effective date.

#### 268.044 WAGE REPORTING.

Subdivision 1. **Wage detail report.** (a) Each employer that has employees in covered employment shall submit a quarterly wage detail report by electronic transmission, in a format prescribed by the commissioner. The report shall include for each employee in covered employment, the employee's name, Social Security number, the total wages paid to the employee, and total number of paid hours worked. For employees exempt from the definition of employee in section 177.23, subdivision 7, clause (6), the employer shall report 40 hours worked for each week any duties were performed by a full-time employee and shall report a reasonable estimate of the hours worked for each week duties were performed by a part-time employee. In addition, the wage detail report shall include the number of employees employed on the 12th day of each calendar month and, if required by the commissioner, the report shall be broken down by business location and type of employment. If the information required is not submitted in a manner and format prescribed by the commissioner, it shall not be considered a wage detail report. The report is due and must be received by the commissioner on or before the last day of the month following the end of the calendar quarter. The commissioner may delay the due date on a specific calendar quarter in the event the department is unable to accept wage detail reports electronically.

(b) The employer may report the wages paid to the next lower whole dollar amount.

(c) An employer need not include the name of the employee or other required information on the wage detail report if disclosure is specifically exempted from being reported by federal law.

(d) A wage detail report must be submitted for each calendar quarter even though no wages were paid, unless the employer has notified the commissioner, under section 268.042, subdivision 1, paragraph (c), of termination of business.

Subd. 1a. **Electronic transmission of report required.** Each employer must submit the quarterly wage detail report by electronic transmission in a format prescribed by the commissioner. The commissioner shall have the discretion to accept wage detail reports that are submitted by any other means or the commissioner may return the report submitted by other than electronic transmission to the employer, and reports returned shall be considered as not submitted and the late fees under subdivision 2 may be imposed.

Subd. 2. **Failure to timely file report; late fees.** (a) Any employer that fails to submit the quarterly wage detail report when due shall pay a late fee of \$10 per employee, computed based upon the highest of:

- (1) the number of employees reported on the last wage detail report submitted;

(2) the number of employees reported in the corresponding quarter of the prior calendar year; or

(3) if no wage detail report has ever been submitted, the number of employees listed at the time of employer registration.

The late fee shall be waived if the wage detail report is received within 30 calendar days after a demand for the report is sent to the employer by mail or electronic transmission. A late fee assessed an employer may not be waived more than once each 12 months. The amount of the late fee assessed shall not be less than \$50.

(b) If the wage detail report is not received in a manner and format prescribed by the commissioner within 30 calendar days after demand is sent under paragraph (a), the late fee assessed under paragraph (a) shall double and a renewed demand notice and notice of the increased late fee shall be sent to the employer by mail or electronic transmission.

(c) Late fees due under this subdivision may be compromised under section 268.067 where good cause for late submission is found by the commissioner.

**Subd. 3. Missing or erroneous information.** Any employer who submits the wage detail report, but fails to include any employee information or enters erroneous information, shall be subject to an administrative service fee of \$25 for each employee for whom the information is missing or erroneous. An administrative service fee may be compromised under section 268.067 if the commissioner determines that the failure or error by the employer was inadvertent.

**Subd. 4. fees.** The fees provided for in subdivisions 2 and 3 are in addition to interest and other penalties imposed by this chapter and shall be collected in the same manner as delinquent taxes and shall be credited to the contingent account.

**History:** *1Sp1982 c 1 s 42; 1986 c 444; 1987 c 362 s 24; 1987 c 370 art 2 s 16; 1987 c 385 s 26; 1997 c 66 s 79,80; 1997 c 74 s 1; 1Sp1997 c 5 s 7; 1998 c 265 s 8; 1Sp2003 c 3 art 2 s 3,4; 2004 c 183 s 17-21*

**NOTE:** Subdivision 1 was also amended by Laws 1997, chapter 66, section 64, to read as follows:

"Subdivision 1. **Wage detail report.** (a) Each employer subject to this chapter shall provide the commissioner with a quarterly report known as the wage detail report, that shall include, for each employee covered by this chapter, the employee's name, Social Security number, and the total wages paid to the employee. The report is due and must be filed on or before the last day of the month following the end of the calendar quarter.

(b) An employer need not include the name of the employee or other required information on the wage detail report if disclosure is specifically exempted by federal law."

**NOTE:** The amendments to this section by Laws 2004, chapter 183, sections 17 to 21, are effective July 1, 2005. Laws 2004, chapter 183, sections 17 to 21, the effective dates.

## 268.045 EMPLOYER TAX OR REIMBURSABLE ACCOUNTS.

**Subdivision 1. Account for each employer.** 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 reimbursements 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 reimbursements for any unemployment benefits determined chargeable to the employer under section 268.047 and shall credit the reimbursable account with the payments made.

**Subd. 2. Common paymaster tax account.** 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, by electronic transmission, in a format prescribed by the commissioner, to establish a common paymaster tax account that shall be the tax account of the common paymaster corporation. The commissioner shall have discretion on approval of a common paymaster tax account. If approved, the separate tax accounts shall be maintained, but the employees compensated through the common paymaster shall be reported under section 268.044 as employees of the common paymaster corporation. The corporations



using the common paymaster tax account shall be jointly and severally liable for any unpaid amounts due under this chapter and section 116L.20 from the common paymaster tax account.

**Subd. 3. Joint tax account.** 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 by electronic transmission in a format prescribed by the commissioner for a combining of the experience ratings of the employers into a single experience rating and joint tax account. The commissioner shall have discretion on approval of a 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 notice terminating the joint tax account is filed with the commissioner by electronic transmission, in a format prescribed by the commissioner. The termination shall be effective on January 1 next following the filing of the notice of termination.

The employers in the joint tax account shall be jointly and severally liable for any unpaid amounts due under this chapter and section 116L.20 from the joint tax account.

**Subd. 4. Group reimbursable account.** Two or more nonprofit or government employers that have elected to be liable for reimbursements 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, filed by electronic transmission in a format prescribed by the commissioner, shall identify and authorize a group representative to act as the group's agent for the purposes of the reimbursable account. The commissioner shall have discretion on approval of a group 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, filed by electronic transmission in a format prescribed by the commissioner, 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 reimbursements 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:** *Ex1936 c 2 s 4; 1937 c 306 s 2; 1939 c 443 s 3; 1941 c 554 s 3; 1943 c 650 s 2; 1945 c 376 s 3; 1947 c 32 s 1-8; 1947 c 432 s 3-5,11; 1947 c 600 s 7; 1949 c 526 s 1; 1949 c 605 s 3-6,17,18; 1951 c 442 s 2; 1953 c 97 s 5,6,8; 1953 c 288 s 1; 1955 c 380 s 2-4,6; 1957 c 25 s 1; 1957 c 873 s 2; 1959 c 702 s 2-4; 1965 c 45 s 40; 1965 c 741 s 6-11; 1967 c 573 s 3; 1967 c 617 s 1; 1967 c 856 s 1; 1969 c 3 s 1; 1969 c 567 s 3; 1969 c 854 s 6; 1971 c 860 s 1; 1971 c 942 s 3-6; 1973 c 254 s 3; 1973 c 599 s 2-4; 1975 c 336 s 6-10; 1977 c 4 s 4,5; 1977 c 297 s 6-11; 1977 c 430 s 25 subd 1; 1977 c 455 s 82; 1978 c 674 s 60; 1979 c 181 s 4-8; 1980 c 508 s 2-7; 1Sp1982 c 1 s 5-12; 1983 c 216 art 1 s 87; 1983 c 247 s 112; 1983 c 372 s 9-15; 1985 c 248 s 70; 1Sp1985 c 14 art 9 s 75; 1986 c 444; 1986 c 451 s 1; 1987 c 242 s 1; 1987 c 362 s 9-12; 1987 c 385 s 10-18; 1989 c 65 s 3-5; 1989 c 209 art 2 s 1; 1992 c 484 s 4-7; 1994 c 483 s 1; 1994 c 488 s 8; 1995 c 54 s 3-7; 1996 c 417 s 5-7,31; 1997 c 66 s 19,26,79; 1998 c 265 s 9; 1999 c 107 s 17; 2000 c 343 s 4; 2001 c 175 s 10; 1Sp2003 c 3 art 2 s 20; 2004 c 183 s 22*

**NOTE:** The amendment to this section by Laws 2004, chapter 183, section 22, is effective July 1, 2005. Laws 2004, chapter 183, section 22, the effective date.

## 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 reimbursements 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 reimbursements 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 reimbursements 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 trust 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 each applicant 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 reimbursements.

(b) A notice under this subdivision shall not be subject to protest or appeal. The commissioner may at any time upon the commissioner's own motion correct any error that resulted in an incorrect notice under paragraph (a) and issue a corrected notice.

**History:** 1997 c 66 s 10,16,79; 1998 c 265 s 10-12; 1999 c 107 s 18-21,66; 2000 c 343 s 4; 2001 c 175 s 11; 1Sp2003 c 3 art 2 s 20; 2004 c 183 s 23

**NOTE:** The amendment to subdivision 5 by Laws 2004, chapter 183, section 23, is effective July 1, 2005. Laws 2004, chapter 183, section 23, the effective date.

**268.048** [Expired, 1997 c 80 s 3]

**268.05** [Renumbered 268.194]

## **268.051 EMPLOYERS TAXES.**

Subdivision 1. **Payments.** (a) Unemployment insurance taxes and any additional assessments, fees, or surcharges shall accrue and become payable by each employer for each calendar year on the taxable wages that the employer paid to employees in covered employment, except for:

(1) nonprofit organizations that elect to make reimbursements as provided in section 268.053; and

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

Except as allowed under section 268.0511, each employer shall pay taxes quarterly, at the employer's assigned tax rate, on the taxable wages paid to each employee. The commissioner shall compute the tax due from the wage detail report required under section 268.044 and notify the employer of the tax due. The taxes and any additional assessments, fees, or surcharges shall be paid to the trust fund and must be received by the department on or before the last day of the month following the end of the calendar quarter.

(b) The tax amount computed, if not a whole dollar, shall be rounded down to the next lower whole dollar.

(c) If for any reason the wages on the wage detail report under section 268.044 are adjusted for any quarter, the commissioner shall recompute the taxes due for that quarter and assess the employer for any amount due or credit the employer as appropriate.

Subd. 1a. **Payments by electronic payment required.** (a) Every employer that reports 500 or more employees in any calendar quarter on the wage detail report required under section 268.044 shall make any payments due under this chapter and section 116L.20 by electronic payment.

(b) All third-party processors, paying quarterly taxes on behalf of a client company, shall make any payments due under this chapter and section 116L.20 by electronic payment.

(c) Regardless of paragraph (a) or (b), the commissioner shall have discretion to accept payment by other means.

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

(b) The base tax rate for the calendar year and any additional assessments under this subdivision shall be determined based upon the amount in the trust fund on March 31 of the prior year as a percentage of total wages paid in covered employment. The base tax rate shall be:

(1) one-tenth of one percent if the trust fund is equal to or more than 0.75 percent;

(2) two-tenths of one percent if the trust fund is less than 0.75 percent but equal to or more than 0.65 percent;

(3) three-tenths of one percent if the trust fund is less than 0.65 percent but equal to or more than 0.55 percent; or

(4) four-tenths of one percent if the trust fund is less than 0.55 percent.

(c) There shall be a "falling trust fund adjustment" to the base tax rate for the calendar year if the amount in the trust fund on March 31 of the prior year is less than 0.75 percent of total wages paid in covered employment and:

(1) the amount in the trust fund on March 31 of the prior year is ten percent or more below the amount in the trust fund on March 31 of the year prior to that; or

(2) the amount in the trust fund on March 31 of the prior year is greater than the amount in the trust fund on June 30 of that same year.

If a "falling trust fund adjustment" is applicable, then the base tax rate shall be 0.1 percent greater than otherwise provided for under paragraph (b).

(d) In addition to the base tax rate under paragraph (b), there shall be an additional assessment for the calendar year on all quarterly unemployment taxes due from every taxpaying employer if the amount in the trust fund on March 31 of the prior year is less than .55 percent of total wages paid in covered employment. The assessment shall be as follows:

(1) a five percent assessment if the trust fund is less than 0.55 percent but equal to or more than 0.45 percent;

(2) a ten percent assessment if the trust fund is less than 0.45 percent but equal to or more than 0.35 percent; or

(3) a 14 percent assessment if the trust fund is less than 0.35 percent.

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

(f) For the purposes of this subdivision, total wages paid in covered employment shall be those wages paid to all employees in covered employment during the calendar year prior to the March 31 date used in paragraph (b).

(g) The commissioner may compute any assessment under this subdivision, and any assessment under subdivision 8, as a percentage of the employer's experience rating and the base tax rate, rounded to the nearest hundredth of a percent.

On tax rate notices sent under subdivision 6, any assessments under this subdivision may be combined with any special assessments for interest on federal loans provided for in subdivision 8 into a single combined assessment.

**Subd. 3. Computation of a taxpaying employer's experience rating.** (a) On or before each December 15, the commissioner shall compute an experience rating for each taxpaying employer who has been subject to paying unemployment taxes for the 12 calendar months ending on the prior June 30. The experience rating computed shall be applicable for the following calendar year.

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 48 calendar months ending on the prior June 30, by the employer's total taxable payroll for that same period.

(b) The experience rating shall be computed to the nearest one-hundredth of a percent, to a maximum of 8.90 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 that percentage of a predecessor's experience rating equal to that percentage of the predecessor's employment positions it has obtained, and the predecessor employer shall retain that percentage of the experience rating equal to that percentage of the employment positions that it has retained, if the successor files an application by electronic transmission, in a format prescribed by the commissioner, for the transfer of a percentage of the experience rating of the predecessor within 180 calendar days from the date of acquisition, that furnishes sufficient information to substantiate the acquisition and to assign the appropriate percentage 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 a protest is filed by the employer within 30 calendar days after sending the determination. Upon receipt of a protest, the commissioner shall review all available evidence and determine whether an error has been made. The commissioner shall either affirm or make a redetermination on whether the employer is a successor within the meaning of this subdivision and send the employer, by mail or electronic transmission, the affirmation or redetermination. The affirmation or redetermination shall be final unless an appeal is filed by the employer within 30 calendar days after the sending of the affirmation or redetermination. 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 an application 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 paragraphs (a) and (b). 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.

**Subd. 5. Tax rate for new employers.** (a) Each new taxpaying employer that does not qualify for an experience rating under subdivision 3, except new employers in a high experience rating industry, shall be assigned, for a calendar year, a tax rate the higher of (1) one percent, or (2) the tax rate computed, to the nearest one-hundredth of a percent, by dividing the total amount of unemployment benefits paid all applicants during the 48 calendar months ending on June 30 of the prior calendar year by the total taxable wages of all taxpaying employers during the same period, plus the applicable base tax rate and any additional assessments under subdivision 2, paragraph (d).

(b) Each new taxpaying employer in a high experience rating industry that does not qualify for an experience rating under subdivision 3, shall be assigned, for a calendar year, a tax rate of 8.00 percent, plus the applicable base tax rate and any additional assessments under subdivision 2, paragraph (d).

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

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

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

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

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

(c) The commissioner shall send to the new employer, by mail or electronic transmission, notice of the tax rate assigned. An employer may protest the assignment of a tax rate in accordance with the procedures in subdivision 6, paragraph (c).

**Subd. 6. Notice of tax rate.** (a) On or before each December 15, the commissioner shall notify each employer by mail or electronic transmission of the employer's tax rate, along with any additional assessments, fees, or surcharges, for the following calendar year. The notice shall contain the base tax rate and the factors used in determining the employer's experience rating. Unless a protest of the tax rate is made, the computed tax rate shall be final except for fraud and shall be the rate at which taxes shall be paid. The tax rate shall not be subject to collateral attack by way of claim for a credit adjustment or refund, or otherwise.

(b) If the legislature, subsequent to the sending of the tax rate, changes any of the factors used to determine the rate, the earlier notice shall be void. A new tax rate based on the new factors shall be computed and sent to the employer.

(c) A review of an employer's tax rate may be obtained by the employer filing a protest within 30 calendar days from the date the tax rate notice was sent to the employer. Upon receipt of the protest, the commissioner shall review the tax rate to determine whether or not there has been any error in computation or assignment of the tax rate. The commissioner shall either affirm or make a redetermination of the rate and a notice of the affirmation or redetermination shall be sent to the employer by

mail or electronic transmission. 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) The commissioner may at any time upon the commissioner's own motion correct any error in the computation or the assignment of an employer's tax rate.

**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 compute a new tax rate.

(b) Voluntary payments may be made only by electronic payment and must be received within 120 calendar days from the beginning of the calendar year for which the tax rate is effective.

**Subd. 8. Special assessment for interest on federal loan.** (a) If on October 31 of any year, the commissioner, in consultation with the commissioner of finance, determines that an interest payment will be due during the following calendar year on any loan from the federal unemployment trust fund under section 268.194, subdivision 6, a special assessment on taxpaying employers will be in effect for the following calendar year. The legislature authorizes the commissioner, in consultation with the commissioner of finance, to determine the appropriate level of the assessment, from two percent to eight percent of the quarterly unemployment taxes due, that will be necessary to pay the interest due on the loan.

(b) The special assessment shall be placed into a special account from which the commissioner shall pay any interest that has accrued on any loan from the federal unemployment trust fund provided for under section 268.194, subdivision 6. If, at the end of each calendar quarter, the commissioner, in consultation with the commissioner of finance, determines that the balance in this special account, including interest earned on the special account, is more than is necessary to pay the interest which has accrued on any loan as of that date, or will accrue over the following calendar quarter, the commissioner shall immediately pay to the trust fund the amount in excess of that necessary to pay the interest on any loan.

**Subd. 9. Assessments, fees, and surcharges; treatment.** Any assessment, fee, or surcharge imposed under the Minnesota Unemployment Insurance Law shall be treated the same as, and considered as, a tax. Any assessment, fee, or surcharge shall be subject to the same collection procedures that apply to past due taxes.

**History:** *Ex1936 c 2 s 4; 1937 c 306 s 2; 1939 c 443 s 3; 1941 c 554 s 3; 1943 c 650 s 2; 1945 c 376 s 3; 1947 c 32 s 1-8; 1947 c 432 s 3-5,11; 1947 c 600 s 7; 1949 c 526 s 1; 1949 c 605 s 3-6,17,18; 1951 c 442 s 2; 1953 c 97 s 5,6,8; 1953 c 288 s 1; 1955 c 380 s 2-4,6; 1957 c 25 s 1; 1957 c 873 s 2; 1959 c 702 s 2-4; 1965 c 45 s 40; 1965 c 741 s 6-11; 1967 c 573 s 3; 1967 c 617 s 1; 1967 c 856 s 1; 1969 c 3 s 1; 1969 c 567 s 3; 1969 c 854 s 6; 1971 c 860 s 1; 1971 c 942 s 3-6; 1973 c 254 s 3; 1973 c 599 s 2-4; 1975 c 336 s 6-10; 1977 c 4 s 4,5; 1977 c 297 s 6-11; 1977 c 430 s 25 subd 1; 1977 c 455 s 82; 1978 c 674 s 60; 1979 c 181 s 4-8; 1980 c 508 s 2-7; 1Sp1982 c 1 s 5-12; 1983 c 216 art 1 s 87; 1983 c 247 s 112; 1983 c 372 s 9-15; 1985 c 248 s 70; 1Sp1985 c 14 art 9 s 75; 1986 c 444; 1986 c 451 s 1; 1987 c 242 s 1; 1987 c 362 s 9-12; 1987 c 385 s 10-18; 1989 c 65 s 3-5; 1989 c 209 art 2 s 1; 1992 c 484 s 4-7; 1994 c 483 s 1; 1994 c 488 s 8; 1995 c 54 s 3-7; 1996 c 417 s 5-7,31; 1997 c 66 s 11-15,17,18,20,21,79; 1998 c 265 s 13; 1999 c 107 s 23-28,66; 2000 c 343 s 4; 2001 c 175 s 12-15; 2002 c 380 art 1 s 1; 1Sp2003 c 3 art 1 s 1-6; art 2 s 20; 2004 c 183 s 24-30*

**NOTE:** The amendments to subdivisions 1, 1a, 3, 4, 5, and 7 by Laws 2004, chapter 183, sections 24 to 28 and 30, are effective July 1, 2005. Laws 2004, chapter 183, sections 24 to 28 and 30, the effective dates.

**268.0511 ANNUAL PAYMENT OF SMALL LIABILITIES.**

(a) An employer may pay all taxes, surcharges, and assessments due under this chapter and section 116L.20, except late fees under section 268.044, for any calendar year on an annual basis if the employer:

- (1) has an experience rating of zero for that calendar year;
- (2) had total taxable wages paid in the 12-month period ending the prior June 30 of less than five times the state's taxable wage base; and
- (3) has no delinquent amounts due under this chapter or section 116L.20.

(b) All amounts due under this section for any calendar year shall be paid on or before the following January 31.

**History:** 1997 c 66 s 80; 1997 c 80 s 2; 2004 c 183 s 31

**NOTE:** The amendment to this section by Laws 2004, chapter 183, section 31, is effective July 1, 2005. Laws 2004, chapter 183, section 31, the effective date.

**268.052 PAYMENT TO TRUST 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 reimburse the trust fund the amount of unemployment benefits charged to its reimbursable account under section 268.047. Reimbursements in the amount of unemployment benefits charged to the reimbursable account during a calendar quarter must be received by the department 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. Past due reimbursements 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 excluding a school district 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 trust fund under subdivisions 3 and 4 shall apply to all taxes paid by or due from the state or political subdivision that elects to be taxpaying employers under this subdivision.

(d) A notice of election or a notice terminating election shall be filed by electronic transmission in a format prescribed by the commissioner.

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



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

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

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

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

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

**Subd. 4. Method of payment by political subdivision.** A political subdivision or instrumentality thereof is authorized and directed to pay its liabilities by money collected from taxes or other revenues. Every political subdivision authorized to levy taxes except school districts may include in its tax levy the amount necessary to pay its liabilities. School districts may levy according to section 126C.43, subdivision 2. If the taxes authorized to be levied cause the total amount of taxes levied to exceed any limitation upon the power of a political subdivision to levy taxes, the political subdivision may levy taxes in excess of the limitations in the amounts necessary to meet its liability. The expenditures authorized shall not be included in computing the cost of government as defined in any home rule charter. The governing body of a municipality, for the purpose of meeting its liabilities, in the event of a deficit, may issue its obligations payable in not more than two years, in an amount that may cause its indebtedness to exceed any statutory or charter limitations, without an election, and may levy taxes in the manner provided in section 475.61.

**Subd. 5. Considered an election.** If the state of Minnesota or its political subdivisions choose not to be a taxpaying 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 reimbursements under subdivision 1.

**History:** *Ex1936 c 2 s 4; 1937 c 306 s 2; 1939 c 443 s 3; 1941 c 554 s 3; 1943 c 650 s 2; 1945 c 376 s 3; 1947 c 32 s 1-8; 1947 c 432 s 3-5,11; 1947 c 600 s 7; 1949 c 526 s 1; 1949 c 605 s 3-6,17,18; 1951 c 442 s 2; 1953 c 97 s 5,6,8; 1953 c 288 s 1; 1955 c 380 s 2-4,6; 1957 c 25 s 1; 1957 c 873 s 2; 1959 c 702 s 2-4; 1965 c 45 s 40; 1965 c 741 s 6-11; 1967 c 573 s 3; 1967 c 617 s 1; 1967 c 856 s 1; 1969 c 3 s 1; 1969 c 567 s 3; 1969 c 854 s 6; 1971 c 860 s 1; 1971 c 942 s 3-6; 1973 c 254 s 3; 1973 c 599 s 2-4; 1975 c 336 s 6-10; 1977 c 4 s 4,5; 1977 c 297 s 6-11; 1977 c 430 s 25 subd 1; 1977 c 455 s 82; 1978 c 674 s 60; 1979 c 181 s 4-8; 1980 c 508 s 2-7; 1Sp1982 c 1 s 5-12; 1983 c 216 art 1 s 87; 1983 c 247 s 112; 1983 c 372 s 9-15; 1985 c 248 s 70; 1Sp1985 c 14 art 9 s 75; 1986 c 444; 1986 c 451 s 1; 1987 c 242 s 1; 1987 c 362 s 9-12; 1987 c 385 s 10-18; 1989 c 65 s 3-5; 1989 c 209 art 2 s 1; 1992 c 484 s 4-7; 1994 c 483 s 1; 1994 c 488 s 8; 1995 c 54 s 3-7; 1996 c 417 s 5-7,31; 1997 c 66 s 22-24,27,79,80; 1999 c 107 s 29,66; 2000 c 343 s 4; 2001 c 175 s 16-18; 2002 c 379 art 1 s 61; 1Sp2003 c 3 art 2 s 5,20; 1Sp2003 c 9 art 5 s 27,28; 2004 c 183 s 32,33*

NOTE: The amendments to subdivisions 1 and 2 by Laws 2004, chapter 183, sections 32 and 33, are effective July 1, 2005. Laws 2004, chapter 183, sections 32 and 33, the effective dates.

### 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 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 reimbursements, fails to make the required payments within 90 days of the notice of delinquency, the commissioner shall terminate the election to make reimbursements as of the beginning of the next calendar year, unless all past due reimbursements, 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 taxpaying 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; 1Sp2003 c 3 art 2 s 20

### 268.053 PAYMENT TO TRUST 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 reimbursements to the trust fund the amount of unemployment benefits charged to its reimbursable account under section 268.047.

The organization may elect to make reimbursements 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 reimbursements 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 reimbursements 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 reimbursements 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) A notice of election or notice terminating election shall be filed by electronic transmission in a format prescribed by the commissioner.

Subd. 2. **Determination, protest, and appeal.** The commissioner shall notify each nonprofit organization by mail or electronic transmission of any determination of its status as an employer with covered employment and of the effective date of any election or termination of election. The determinations shall be final unless a protest is filed within 30 calendar days after sending of the determination. Upon receipt of a protest, the commissioner shall review all available evidence and determine whether an error has been made. The commissioner shall send to the nonprofit organization, by mail or electronic transmission, an affirmation or redetermination. The affirmation or redetermination shall be final unless an appeal is filed within 30 calendar days of sending the affirmation or redetermination. Proceedings on the appeal shall be conducted in accordance with section 268.105.

Subd. 3. **Payments.** (a) Reimbursements, in the amount of unemployment benefits charged to the reimbursable account, during a calendar quarter, must be received by the department 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 reimbursements 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 reimbursements, the commissioner may terminate the organization's election to make reimbursements as of the beginning of the next calendar year, and the termination shall be effective for that and the following calendar year. A nonprofit organization that has its election terminated under this paragraph shall be assigned the new employer tax rate under section 268.051, subdivision 5, until the organization qualifies for an experience rating under section 268.051, subdivision 3.

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

Subd. 5. **Compromise.** The compromise authority set out in section 268.067 applies to this section.

**History:** *Ex1936 c 2 s 4; 1937 c 306 s 2; 1939 c 443 s 3; 1941 c 554 s 3; 1943 c 650 s 2; 1945 c 376 s 3; 1947 c 32 s 1-8; 1947 c 432 s 3-5,11; 1947 c 600 s 7; 1949 c 526 s 1; 1949 c 605 s 3-6,17,18; 1951 c 442 s 2; 1953 c 97 s 5,6,8; 1953 c 288 s 1; 1955 c 380 s 2-4,6; 1957 c 25 s 1; 1957 c 873 s 2; 1959 c 702 s 2-4; 1965 c 45 s 40; 1965 c 741 s 6-11; 1967 c 573 s 3; 1967 c 617 s 1; 1967 c 856 s 1; 1969 c 3 s 1; 1969 c 567 s 3; 1969 c 854 s 6; 1971 c 860 s 1; 1971 c 942 s 3-6; 1973 c 254 s 3; 1973 c 599 s 2-4; 1975 c 336 s 6-10; 1977 c 4 s 4,5; 1977 c 297 s 6-11; 1977 c 430 s 25 subd 1; 1977 c 455 s 82; 1978 c 674 s 60; 1979 c 181 s 4-8; 1980 c 508 s 2-7; 1Sp1982 c 1 s 5-12; 1983 c 216 art 1 s 87; 1983 c 247 s 112; 1983 c 372 s 9-15; 1985 c 248 s 70; 1Sp1985 c 14 art 9 s 75; 1986 c 444; 1986 c 451 s 1; 1987 c 242 s 1; 1987 c 362 s 9-12; 1987 c 385 s 10-18; 1989 c 65 s 3-5; 1989 c 209 art 2 s 1; 1992 c 484 s 4-7; 1994 c 483 s 1; 1994 c 488 s 8; 1995 c 54 s 3-7; 1996 c 417 s 5-7,31; 1997 c 66 s 25,79,80; 1999 c 107 s 30; 2000 c 343 s 2-4; 2001 c 175 s 20,21; 1Sp2003 c 3 art 2 s 20; 2004 c 183 s 34-36*

**NOTE:** The amendments to subdivisions 1, 2, and 3, by Laws 2004, chapter 183, sections 34 to 36, are effective July 1, 2005. Laws 2004, chapter 183, sections 34 to 36, the effective dates.

**268.054** [Repealed, 1998 c 265 s 46]

## **268.057 COLLECTION OF TAXES.**

Subdivision 1. **Amount computed presumed correct.** Any amount due from an employer, as computed by the commissioner, shall be presumed to be correctly

determined and assessed, and the burden shall be upon the employer to show its incorrectness. A statement by the commissioner of the amount due shall be admissible in evidence in any court or administrative proceeding and shall be prima facie evidence of the facts in the statement.

**Subd. 2. Priority of payments.** (a) Any payment received from a taxpaying employer shall be applied in the following order:

- (1) unemployment insurance taxes; then
- (2) special assessment for interest on any federal loan; then
- (3) workforce development fee; then
- (4) interest on past due taxes; then
- (5) penalties, late fees, administrative service fees, and costs.

(b) Paragraph (a) shall be the priority used for all payments received from a taxpaying employer, regardless of how the employer may designate the payment to be applied, except when:

- (1) there is an outstanding lien and the employer designates that the payment made should be applied to satisfy the lien;
- (2) the payment is for back pay withheld from an applicant pursuant to section 268.085, subdivision 6, paragraph (b);
- (3) the payment is specifically designated by the employer to be applied to an outstanding overpayment of unemployment benefits of an applicant;
- (4) a court or administrative order directs that the payment be applied to a specific obligation;
- (5) a preexisting payment plan provides for the application of payment; or
- (6) the commissioner, under the compromise authority of section 268.067, agrees to apply the payment to a different priority.

**Subd. 3. Estimating the tax due.** Only if an employer fails to make all necessary records available for an audit pursuant to section 268.186, paragraph (b), and the commissioner has reason to believe the employer has not reported all the required wages on the quarterly wage detail reports under section 268.044, may the commissioner then estimate the amount of tax due and assess the employer the estimated amount due.

**Subd. 4. Costs.** Any person that fails to pay any amount when due under this chapter is liable for any filing fees, recording fees, sheriff fees, costs incurred by referral to any public or private collection agency, or litigation costs, including attorney fees, incurred in the collection of the amounts due.

If any tendered payment of any amount due, is not honored when presented to a financial institution for payment, a fee of \$25 shall be assessed.

Costs and fees collected under this subdivision shall be credited to the administration account to be used by the commissioner to ensure integrity in the administration of the unemployment insurance program.

**Subd. 5. Interest on amounts past due.** If any amounts due from an employer under this chapter or section 116L.20, except late fees under section 268.044, are not received on the date due the unpaid balance shall bear interest at the rate of one and one-half percent per month or any part thereof. Interest assessed, if not a whole dollar amount, shall be rounded down to the next lower whole dollar. Interest collected shall be credited to the contingent account. Interest may be compromised under section 268.067.

**Subd. 6. Interest on judgments.** Regardless of section 549.09, if judgment is entered upon any past due amounts from an employer under this chapter or section 116L.20, the unpaid judgment shall bear interest at the rate specified in subdivision 5 until the date of payment.

**Subd. 7. Credit adjustments, refunds.** (a) If an employer makes an application for a credit adjustment of any amount paid under this chapter or section 116L.20 within four years of the year that the payment was made, in a manner and format prescribed

by the commissioner, and the commissioner determines that the payment or any portion was erroneous, the commissioner shall make an adjustment and issue a credit without interest. If a credit cannot be used, the commissioner shall refund, without interest, the amount erroneously paid. The commissioner, on the commissioner's own motion, may make a credit adjustment or refund under this subdivision.

Any refund returned to the commissioner shall be considered unclaimed property under chapter 345.

(b) If a credit adjustment or refund is denied in whole or in part, a notice of denial shall be sent to the employer by mail or electronic transmission. Within 30 calendar days after sending of the notice of denial, the employer may protest.

Upon receipt of a timely protest, the commissioner shall review the denial and either affirm the denial or redetermine the credit adjustment or refund. The affirmation of denial or redetermination of the credit adjustment or refund, sent by mail or electronic transmission, shall be final unless an employer files an appeal within 30 calendar days after sending. Proceedings on the appeal shall be conducted in accordance with section 268.105.

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

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

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

**History:** *Ex1936 c 2 s 14; 1941 c 554 s 13; 1943 c 650 s 9; 1945 c 376 s 13; 1949 c 605 s 12,13; 1951 c 55 s 1; 1953 c 97 s 17; 1969 c 9 s 65; 1969 c 567 s 3; 1969 c 854 s 13; 1973 c 254 s 3; 1973 c 720 s 73 subds 2,3; 1975 c 108 s 1; 1975 c 302 s 3,4; 1975 c 336 s 22,23; 1977 c 430 s 25 subd 1; 1978 c 618 s 2; 1978 c 674 s 60; 1980 c 508 s 11-13; 3Sp1981 c 2 art 1 s 33; 1Sp1982 c 1 s 34,35; 1983 c 372 s 39; 1985 c 248 s 70; 1Sp1985 c 14 art 9 s 75; 1986 c 444; 1987 c 362 s 26; 1987 c 385 s 28-30; 1989 c 65 s 12; 1989 c 209 art 2 s 1; 1993 c 67 s 11; 1994 c 483 s 1; 1995 c 54 s 13-15; 1996 c 417 s 24,31; 1997 c 66 s 66-69,79,80; 1998 c 265 s 14-17,44; 1999 c 107 s 31,32,66; 2000 c 343 s 4; 1Sp2003 c 3 art 2 s 6,20; 2004 c 183 s 37*

**NOTE:** The amendment to this section by Laws 2004, chapter 183, section 37, is effective July 1, 2005. Laws 2004, chapter 183, section 37, the effective date.

**NOTE:** The amendment to subdivision 5 by Laws 2004, chapter 183, section 37, does not apply to late tax report penalties issued prior to July 1, 2005. Laws 2004, chapter 183, section 37, the effective date.

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

Subdivision 1. **Lien.** (a) Any amount due under this chapter or section 116L.20, from an applicant or an employer, 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.

**Subd. 2. Levy.** (a) If any amount due under this chapter or section 116L.20, from an applicant or an employer, is not paid when due, the amount may be collected by the commissioner by direct levy upon all property and rights of property of the person liable for the amount due except that exempt from execution under section 550.37. The term "levy" includes the power of distraint and seizure by any means.

(b) In addition to a direct levy, the commissioner may issue a warrant to the sheriff of any county who shall proceed within 60 calendar days to levy upon the property or rights to property of the delinquent person within the county, except that exempt under section 550.37. The sheriff shall sell that property necessary to satisfy the total amount due, together with the commissioner's and sheriff's costs. The sales shall be governed by the law applicable to sales of like property on execution of a judgment.

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

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

(e) In executing the levy, the commissioner shall have all of the powers provided in chapter 550 or any other law that provides for execution against property in this state.

The sale of property levied upon and the time and manner of redemption shall be as provided in chapter 550. The seal of the court shall not be required. The levy may be made whether or not the commissioner has commenced a legal action for collection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subd. 3. **Right of setoff.** (a) Upon certification by the commissioner to the commissioner of finance, or to any state agency that disburses its own funds, that a person, applicant, or employer has a liability under this chapter or section 116L.20, and that the state has purchased personal services, supplies, contract services, or property from that person, the commissioner of finance or the state agency shall set off and pay to the commissioner an amount sufficient to satisfy the unpaid liability from funds appropriated for payment of the obligation of the state otherwise due the person. No amount shall be set off from any funds exempt under section 550.37 or funds due an individual who receives assistance under chapter 256.

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

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

Subd. 4. **Collection by civil action.** (a) Any amount due under this chapter or section 116L.20, from an applicant or employer, may be collected by civil action in the name of the state of Minnesota. Civil actions brought under this subdivision shall be heard as provided under section 16D.14. In any action, judgment shall be entered in default for the relief demanded in the complaint without proof, together with costs and disbursements, upon the filing of an affidavit of default.

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

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

Subd. 5. **Injunction forbidden.** No injunction or other legal action to prevent the determination, assessment, or collection of any amounts due under this chapter or section 116L.20, from an applicant or employer, shall be allowed.

**History:** 1Sp1982 c 1 s 36; 1983 c 372 s 40-44; 1985 c 281 s 1; 1Sp1985 c 14 art 9 s 75; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1987 c 385 s 31-34; 1989 c 209 art 2 s 1; 1991 c 291 art 18 s 1; 1992 c 484 s 14; 1993 c 67 s 12; 1993 c 137 s 8; 1994 c 483 s 1; 1994 c 488 s 7; 1995 c 54 s 16,17; 1996 c 417 s 25,31; 1997 c 66 s 67,79,80; 1998 c 265 s 44; 1999 c 107 s 33,66; 2000 c 343 s 4; 2001 c 195 art 2 s 10; 1Sp2003 c 3 art 2 s 20; 2004 c 183 s 38

## **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 any amounts due under this chapter or section 116L.20, and that the obligation should be withheld from the employee's wages. The commissioner may proceed only if the amount due is uncontested or if the time for any appeal has expired. The commissioner shall not proceed until 30 calendar days after sending to the debtor employee, by mail or electronic transmission, a notice of intent to garnish wages and exemption notice. That notice shall list:

- (1) the amount 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 sent to the debtor provided that the notice may be renewed by sending 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 claim of exemption is received by the commissioner within 30 calendar days after sending of the notice, the commissioner may proceed with the garnishment. The notice to the debtor's employer may be served by mail or electronic transmission 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 or by electronic transmission, as prescribed by the commissioner, 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 the same manner as any other amounts due from an employer under this chapter.

**History:** 1996 c 417 s 28; 1997 c 66 s 70,79; 1998 c 265 s 18; 2000 c 343 s 4; 2000 c 499 s 1; 2001 c 175 s 22; 1Sp2003 c 3 art 2 s 20; 2004 c 183 s 39,40

**268.06** Subdivision 1. [Renumbered 268.051, subdivision 1]

Subd. 2. [Repealed, 1997 c 66 s 81]

Subd. 3. [Repealed, 1969 c 854 s 14]

Subd. 3a. [Renumbered 268.051, subd 5]

Subd. 4. [Repealed, 1997 c 66 s 81]

Subd. 5. [Repealed, 1997 c 66 s 81]

Subd. 6. [Renumbered 268.051, subd 3]

Subd. 7. [Repealed, 1949 c 605 s 15]

Subd. 8. [Renumbered 268.051, subd 2]

- Subd. 8a. [Renumbered 268.051, subd 8]
- Subd. 9. [Repealed, 1949 c 605 s 15]
- Subd. 10. [Repealed, 1949 c 605 s 15]
- Subd. 11. [Repealed, 1953 c 97 s 7]
- Subd. 12. [Repealed, 1953 c 97 s 7]
- Subd. 13. [Repealed, 1953 c 97 s 7]
- Subd. 14. [Repealed, 1953 c 97 s 7]
- Subd. 15. [Repealed, 1953 c 97 s 7]
- Subd. 16. [Repealed, 1953 c 97 s 7]
- Subd. 17. [Repealed, 1949 c 605 s 15]
- Subd. 18. [Renumbered 268.047, subd 5]
- Subd. 19. [Renumbered 268.051, subd 6]
- Subd. 20. [Renumbered 268.051, subd 6, paras (c) and (d)]
- Subd. 21. [Renumbered 268.045]
- Subd. 22. [Renumbered 268.051, subd 4]
- Subd. 23. [Repealed, 1955 c 380 s 5]
- Subd. 24. [Renumbered 268.051, subd 7]
- Subd. 25. [Renumbered 268.052, subdivision 1]
- Subd. 26. [Renumbered 268.052, subd 3]
- Subd. 27. [Renumbered 268.052, subd 4]
- Subd. 28. [Renumbered 268.053]
- Subd. 29. [Renumbered 268.045, para (d)]
- Subd. 30. [Repealed, 1997 c 66 s 81]
- Subd. 31. [Renumbered 268.052, subd 2]
- Subd. 32. [Repealed, 1983 c 372 s 48]
- Subd. 32. [Repealed, 1983 c 372 s 48]
- Subd. 33. [Repealed, 1997 c 66 s 81]
- Subd. 34. [Renumbered 268.054]

**268.061** [Repealed, 1988 c 689 art 2 s 269]

**268.062** [Renumbered 268.068]

### **268.0625 REVOCATIONS OF BUSINESS LICENSES.**

Subdivision 1. **Notice of debt to licensing authority.** The state of Minnesota or a political subdivision may not issue, transfer, or renew, and must revoke a license for the conduct of any profession, trade, or business, if the commissioner notifies the licensing authority that the licensee, applicant, or employer owes any amount due under this chapter or section 116L.20, of \$500 or more. A licensing authority that has received such a notice may issue, transfer, renew, or not revoke the license only if the licensing authority has received a copy of the debt clearance certificate issued by the commissioner.

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

- (1) the licensee has fully paid any amounts due under this chapter or section 116L.20; or
- (2) the licensee has entered into an agreement to pay the total amount due and is current with all the terms of that agreement.

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

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

(2) an officer of a corporation, manager of a limited liability company, or a member of a partnership, or an individual who is liable for amounts due under this chapter or section 116L.20, either for the entity that the license is at issue or for another entity that the liability was incurred, or personally as a licensee. "Licensee" includes both the transferor and the transferee of the license and any holder of a license.

**Subd. 4. Notice and right to hearing.** At least 30 calendar days before the commissioner notifies a licensing authority, a notice of action under this section shall be sent to the licensee by mail or electronic transmission. If the licensee disputes the action, the licensee must appeal within 30 calendar days after the sending of the notice to the licensee. The only issue on any appeal is whether the commissioner has complied with the requirements of this section. Proceedings on the appeal shall be conducted in accordance with section 268.105.

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

**History:** 1987 c 385 s 37; 1994 c 488 s 8; 1995 c 54 s 20; 1996 c 417 s 26,27; 1997 c 66 s 79,80; 1999 c 107 s 34; 2000 c 343 s 4; 1Sp2003 c 3 art 2 s 20; 2004 c 183 s 41

## 268.063 PERSONAL LIABILITY.

(a) Any officer, director, or employee of a corporation or any manager, governor, member, or employee of a limited liability company who

(1) either individually or jointly with others, have or should have had control of, supervision over, or responsibility for paying the amounts due under this chapter or section 116L.20, and

(2) knowingly fails to pay the amounts due, shall be personally liable for the amount due in the event the employer does not pay.

For purposes of this section, "knowingly" means that the facts demonstrate that the responsible individual used or allowed the use of corporate or company assets to pay other creditors knowing that the amounts due under this chapter were unpaid. An evil motive or intent to defraud is not necessary.

(b) Any partner of a limited liability partnership, or professional limited liability partnership, shall be jointly and severally liable for any amount due under this chapter or section 116L.20 in the event the employer does not pay.

(c) Any personal representative of the estate of a decedent or fiduciary who voluntarily distributes the assets without reserving a sufficient amount to pay the amount due shall be personally liable for the deficiency.

(d) The personal liability of any individual shall survive dissolution, reorganization, receivership, or assignment for the benefit of creditors. For the purposes of this section, all wages paid by the employer shall be considered earned from the individual determined to be personally liable.

(e) The commissioner shall make a determination as to personal liability. The determination shall be final unless the individual found to be personally liable, within 30 calendar days after sending, by mail or electronic transmission, a notice of determination, files a protest. Upon receipt of the protest, the commissioner shall reexamine the personal liability determination and either affirm or redetermine the assessment of personal liability and a notice of the affirmation or redetermination shall be sent to the individual by mail or electronic transmission. The affirmation or redetermination shall become final unless an appeal is filed within 30 calendar days

after the date of sending. Proceedings on the appeal shall be conducted in accordance with section 268.105.

**History:** *1Sp1982 c 1 s 36; 1983 c 372 s 40-44; 1985 c 281 s 1; 1Sp1985 c 14 art 9 s 75; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1987 c 385 s 31-34; 1989 c 209 art 2 s 1; 1991 c 291 art 18 s 1; 1992 c 484 s 14; 1993 c 67 s 12; 1993 c 137 s 8; 1994 c 483 s 1; 1994 c 488 s 7; 1995 c 54 s 16,17; 1996 c 417 s 25,31; 1997 c 66 s 79; 1998 c 265 s 19; 1Sp2003 c 3 art 2 s 20; 2004 c 183 s 42*

#### **268.064 LIABILITY FOR DEBTS UPON ACQUISITION.**

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

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

**Subd. 3. Statement of amount due.** Prior to the date of acquisition, the commissioner shall furnish the acquiring person with a statement of the amounts due and unpaid under this chapter or section 116L.20 upon the request of the potential acquiring person and the release of the obligor. No release is required after the date of acquisition.

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

**History:** *1987 c 385 s 35; 1989 c 65 s 13; 1995 c 54 s 18; 1997 c 66 s 79,80; 1998 c 265 s 20,44; 1999 c 107 s 35; 2004 c 183 s 43,44*

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

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

- (1) withholding sufficient money on the contract; or
- (2) requiring the subcontractor to provide a sufficient bond guaranteeing the payment of all amounts that may become due.

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

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

**Subd. 2. Employee leasing firms.** A person whose work force consists of 50 percent or more of workers provided by employee leasing firms, is jointly and severally liable for the unpaid amounts that are due under this chapter or section 116L.20 on the wages paid on the contract with the employee leasing firm. "Employee leasing firm" means an employer that provides its employees to other persons without severing its employer-employee relationship with the worker for the services performed for the lessee.

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

**History:** 1987 c 385 s 36; 1989 c 65 s 14; 1995 c 54 s 19; 1997 C 66 S 79,80; 1998 c 265 s 44; 1999 c 107 s 36; 2004 c 183 s 45,46

## 268.066 CANCELLATION OF AMOUNTS DUE FROM AN EMPLOYER.

(a) The commissioner shall cancel as uncollectible any amounts due from an employer under this chapter or section 116L.20, which remain unpaid six years after the amounts have been first determined due, except where the delinquent amounts are secured by a notice of lien, a judgment, are in the process of garnishment, or are under a payment plan.

(b) The commissioner may cancel at any time as uncollectible any amount due, or any portion of an amount due, from an employer under this chapter or section 116L.20, that (1) are uncollectible due to death or bankruptcy, (2) the Minnesota Collection Enterprise under section 16D.04 was unable to collect, or (3) the commissioner determines that it is not in the public interest to pursue collection of the amount due.

**History:** 1987 c 385 s 39; 1996 c 305 art 1 s 58; 1997 c 66 s 79; 1998 c 265 s 21; 1Sp2003 c 3 art 2 s 20; 2004 c 183 s 47

## 268.067 COMPROMISE.

(a) The commissioner may compromise in whole or in part any action, determination, or decision that affects only an employer and not an applicant, and that has occurred during the prior 24 months. This paragraph may apply if it is determined by a court of law, or a confession of judgment, that an applicant, while employed, wrongfully took from the employer \$500 or more in money or property.

(b) The commissioner may at any time compromise any amount due from an employer under this chapter or section 116L.20.

(c) Any compromise involving an amount over \$2,500 shall be authorized by an attorney who is an employee of the department designated by the commissioner for that purpose.

(d) Any compromise must be in the best interest of the state of Minnesota.

**History:** Ex1936 c 2 s 14; 1941 c 554 s 13; 1943 c 650 s 9; 1945 c 376 s 13; 1949 c 605 s 12,13; 1951 c 55 s 1; 1953 c 97 s 17; 1969 c 9 s 65; 1969 c 567 s 3; 1969 c 854 s 13; 1973 c 254 s 3; 1973 c 720 s 73 subds 2,3; 1975 c 108 s 1; 1975 c 302 s 3,4; 1975 c 336 s 22,23; 1977 c 430 s 25 subd 1; 1978 c 618 s 2; 1978 c 674 s 60; 1980 c 508 s 11-13; 3Sp1981 c 2 art 1 s 33; 1Sp1982 c 1 s 34,35; 1983 c 372 s 39; 1985 c 248 s 70; 1Sp1985 c 14 art 9 s 75; 1986 c 444; 1987 c 362 s 26; 1987 c 385 s 28-30; 1989 c 65 s 12; 1989 c 209 art 2 s 1; 1993 c 67 s 11; 1994 c 483 s 1; 1995 c 54 s 13-15; 1996 c 417 s 24,31; 1997 c 66 s 79; 1998 c 265 s 22; 1999 c 107 s 37,66; 1Sp2003 c 3 art 2 s 7; 2004 c 183 s 48

## 268.0675 NO ELECTION OF REMEDY.

Use of any remedy under this chapter for the collection of any amount due from an employer or an applicant shall not constitute an election of remedy to the exclusion of any other available remedy.

**History:** 1999 c 107 s 38; 2000 c 343 s 4; 1Sp2003 c 3 art 2 s 20; 2004 c 183 s 49

## 268.068 NOTICE TO WORKERS.

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

**History:** 1996 c 417 s 8; 1997 c 66 s 79; 1999 c 107 s 39; 2000 c 343 s 4

**268.069 PAYMENT OF UNEMPLOYMENT BENEFITS.**

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

- (1) the applicant has filed an application for unemployment benefits and established a benefit account in accordance with section 268.07;
- (2) the applicant is not subject to a disqualification from unemployment benefits under section 268.095;
- (3) the applicant has met all of the ongoing weekly eligibility requirements under sections 268.085 and 268.086;
- (4) the applicant does not have an outstanding overpayment of unemployment benefits, including any penalties or interest, under section 268.18; and
- (5) the applicant is not subject to a denial of unemployment benefits under section 268.182.

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

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

**History:** 1997 c 66 s 28; 1998 c 265 s 45; 1999 c 107 s 40,66; 2000 c 343 s 4; 1Sp2003 c 3 art 2 s 20

**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, 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, or provided erroneous information, the commissioner may 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 66-2/3 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 45 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 an applicant's weekly unemployment benefit amount and maximum amount of unemployment benefits available shall be rounded down to the next lower whole dollar. The state's maximum weekly benefit amount, computed in accordance with section 268.035, subdivision 23, shall apply to a benefit account established effective on or after the first Sunday in August. Once established, an applicant's weekly unemployment benefit amount shall not be affected by the first Sunday in August change in the state's maximum weekly unemployment benefit amount.

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

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

**Subd. 2a.** [Repealed by amendment, 1996 c 417 s 9]

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

**Subd. 3a. Right of appeal.** (a) A determination or 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 unemployment 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 trust fund only for weeks occurring during the applicant's benefit year.

Subd. 4. MS 1949 [Repealed, 1951 c 442 s 3]

Subd. 4. MS 1980 [Repealed, 1Sp1982 c 1 s 43]

Subd. 5. [Repealed, 1975 c 336 s 25]

Subd. 6. [Repealed, 1947 c 32 s 9]

**History:** (4337-25) *Ex1936 c 2 s 5; 1937 c 306 s 3; 1939 c 443 s 4; 1941 c 554 s 4; 1943 c 650 s 3; 1945 c 376 s 4; 1947 c 432 s 6; 1949 c 605 s 7,8; 1951 c 442 s 3; 1953 c 587 s 1; 1955 c 816 s 1; 1957 c 780 s 1; 1965 c 741 s 12,13; 1967 c 573 s 4; 1969 c 854 s 7; 1971 c 408 s 1; 1971 c 942 s 7,8; Ex1971 c 10 s 1; 1973 c 599 s 5; 1975 c 104 s 1; 1975 c 336 s 11; 1977 c 4 s 6; 1977 c 297 s 12; 1979 c 284 s 1; 1Sp1982 c 1 s 13-15; 1983 c 372 s 17,18; 1985 c 248 s 70; 1986 c 444; 1987 c 242 s 2; 1987 c 362 s 13-15; 1987 c 385 s 19; 1989 c 65 s 6,7; 1989 c 209 art 2 s 1; 1990 c 516 s 3; 1992 c 484 s 8; 1996 c 417 s 9,31; 1997 c 66 s 29-32,79; 1998 c 265 s 23; 1998 c 408 s 3; 1999 c 107 s 41,66; 2000 c 343 s 4; 2001 c 175 s 23-26; 1Sp2003 c 3 art 1 s 7; art 2 s 8,20; 2004 c 183 s 50-52*

**268.071** [Renumbered 268.115]

**268.072** [Renumbered 268.155]

**268.073** Subdivision 1. [Renumbered 268.125, subdivision 1]

Subd. 2. [Renumbered 268.125, subd 2]

Subd. 3. [Renumbered 268.125, subd 3]

Subd. 4. [Renumbered 268.125, subd 4]

Subd. 5. [Renumbered 268.125, subd 5]

Subd. 6. [Repealed, 1994 c 503 s 7]

Subd. 7. [Repealed, 1997 c 66 s 81]

**268.074** [Renumbered 268.135]

**268.075** [Renumbered 268.145]

**268.08** Subdivision 1. [Renumbered 268.085, subdivision 1]

Subd. 1a. [Renumbered 268.087]

Subd. 2. [Renumbered 268.085, subd 2]

Subd. 2a. [Renumbered 268.085, subd 13]



- Subd. 3. [Renumbered 268.085, subd 3]
- Subd. 3a. [Renumbered 268.085, subd 5]
- Subd. 3b. [Renumbered 268.085, subd 6]
- Subd. 4. [Renumbered 268.085, subd 4]
- Subd. 5. [Repealed, 1977 c 297 s 22]
- Subd. 5a. [Repealed, 1998 c 265 s 46]
- Subd. 6. [Renumbered 268.085, subd 7]
- Subd. 7. [Renumbered 268.085, subd 11]
- Subd. 8. [Renumbered 268.085, subd 12]
- Subd. 9. [Renumbered 268.085, subd 8]
- Subd. 10. [Renumbered 268.085, subd 10]
- Subd. 11. [Renumbered 268.085, subd 9]

**268.081** [Repealed, 1993 c 4 s 34]

## **268.084 PERSONAL IDENTIFICATION NUMBER; PRESUMPTION.**

(a) Each applicant shall be issued a personal identification number (PIN) for the purpose of filing continued biweekly requests for unemployment benefits, accessing information, and engaging in other transactions with the department.

(b) If a PIN assigned to an applicant is used in the filing of a continued biweekly request for unemployment benefits under section 268.086 or any other type of transaction, the applicant shall be presumed to have been the individual using that PIN and presumed to have received any unemployment benefit payment issued. This presumption may be rebutted by a preponderance of the evidence showing that the applicant assigned the PIN was not the individual who used that PIN in the transaction.

(c) The commissioner shall notify each applicant of this section.

**History:** *1Sp2003 c 3 art 2 s 9*

## **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 biweekly 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. If the computation of the reduced unemployment benefits is not a whole dollar, it shall be rounded down to the next lower whole dollar.

This clause shall not apply to an applicant who is in reemployment assistance training, or 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. If the computation of the reduced unemployment benefits is not a whole dollar, it shall be rounded down to the next lower whole dollar;

(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. Payments that delay unemployment benefits.** (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, 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, but only if the money payment is considered wages at the time of payment 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 all the weeks of payment and 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 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 lower whole 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 trust 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 biweekly requests for unemployment benefits whether the applicant is receiving, has filed for, or intends to file for, primary Social Security old age benefits for any week during the benefit year.

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 benefit the applicant has received, has filed for, or intends to file for, with respect to that week.

(b) An applicant who is receiving, has received, or has filed for primary Social Security disability benefits

for any week during the benefit year shall be determined unable to work and unavailable for suitable employment for that week, unless:

(1) the Social Security Administration approved the collecting of primary Social Security disability benefits each month the applicant was employed during the base period; or

(2) the applicant provides a statement from an appropriate health care professional who is aware of the applicant's Social Security disability claim and the basis for that claim, certifying that the applicant is able to work and available for suitable employment.

If an applicant meets the requirements of clause (1) or (2), then there shall be deducted from the applicant's weekly unemployment benefit amount 50 percent of the weekly equivalent of the primary Social Security disability benefits the applicant is receiving, has received, or has filed for, with respect to that week; provided, however, that if the Social Security Administration determines that an individual is not entitled to receive primary Social Security disability benefits for any week the applicant has applied for those benefits, the 50 percent deduction shall not apply to that week.

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

(d) If the computation of the reduced unemployment benefits is not a whole dollar, it shall be rounded down to the next lower whole dollar.

(e) This subdivision does not apply to Social Security survivor benefits.

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

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

- (1) 25 percent of earnings or \$50, whichever is higher; and
- (2) \$200 for earnings from service in the National Guard or a United States military reserve unit.

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

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

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

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

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

If the back pay is not paid with respect to a specific period, 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 trust 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 reimbursements in the calendar quarter the trust fund receives payment.

(d) Payments to the trust 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 biweekly 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).

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

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

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

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

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

(2) is not permanently separated from employment.

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

**Subd. 10. Recreational or tourist industry employment.** (a) If an applicant has wage credits from recreational or tourist industry employment, unemployment benefits shall be available only if the applicant can establish a benefit account under section 268.07, subdivision 2, excluding the wage credits from recreational or tourist industry

employment. This subdivision applies only to employment that is available with the employer for 15 consecutive weeks or less each calendar year.

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

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

- (1) the applicant was so employed in the prior season or similar period, and
- (2) there is a reasonable assurance that the applicant will be so employed in the following season or similar period.

Subd. 12. **Aliens.** (a) An alien shall be ineligible for unemployment benefits for any week the alien is not authorized to work in the United States under federal law. Information from the Immigration and Naturalization Service shall be considered conclusive, absent specific evidence that the information was erroneous. Pursuant to the existing agreement between the United States and Canada, this paragraph shall not apply to an applicant who is a Canadian citizen and has returned to and is living in Canada each week unemployment benefits are requested.

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

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

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

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

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

Subd. 13a. **Leave of absence.** (a) An applicant on a voluntary leave of absence shall be ineligible for unemployment benefits for the duration of the leave of absence. An applicant on an involuntary leave of absence shall not be ineligible under this subdivision.

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. A medical leave of absence shall not be presumed to be voluntary.

(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 be considered an involuntary leave of absence.

(c) A voluntary leave of absence shall not be considered a quit and an involuntary leave of absence shall not be considered 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 unemployment benefits for the duration of the leave.

(c) 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. 13b. **Labor dispute.** (a) An applicant who has stopped working because of a labor dispute at the establishment where the applicant is employed shall be ineligible for unemployment benefits:

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

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

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

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

(c) An applicant shall not be ineligible for unemployment benefits under this subdivision if:

(1) the applicant stops working because of an employer's intentional failure to observe the terms of the safety and health section of a union contract or failure to comply with an official citation for a violation of federal or state laws involving occupational safety and health;

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

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

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

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

Subd. 14. **Able to work defined.** "Able to work" means an applicant has the physical and mental ability to perform (1) the usual duties of the applicant's usual occupation or (2) the usual duties of work that is gainful employment engaged in by others as a means of livelihood.

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."

Subd. 16. **Actively seeking suitable employment defined.** (a) "Actively seeking suitable employment" means those reasonable, diligent efforts an individual in similar circumstances would make if genuinely interested in obtaining suitable employment

under the existing conditions in the labor market area. Limiting the search to positions that are not available or are above the applicant's training, experience, and qualifications is not "actively seeking suitable employment."

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

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

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

**History:** (4337-26) Ex1936 c 2 s 6; 1937 c 43 s 2; 1937 c 306 s 4; 1939 c 443 s 5; 1941 c 554 s 5; 1943 c 650 s 4; 1945 c 376 s 5; 1949 c 605 s 9; 1953 c 97 s 9; 1953 c 699 s 10; 1965 c 741 s 14-16; 1969 c 6 s 34; 1971 c 942 s 9,10; 1973 c 599 s 6-8; 1975 c 104 s 2; 1975 c 336 s 13-15; 1975 c 359 s 23; 1976 c 163 s 59; 1976 c 271 s 78; 1977 c 4 s 7; 1977 c 297 s 15-18; 1978 c 612 s 1; 1979 c 24 s 1; 1979 c 181 s 9,10,19; 1980 c 508 s 8; 1Sp1982 c 1 s 23-25; 1983 c 290 s 168; 1983 c 372 s 20-24; 1985 c 248 s 44; 1986 c 444; 1987 c 362 s 18; 1987 c 384 art 1 s 55; 1987 c 385 s 20-22; 1989 c 209 art 2 s 1; 1989 c 282 art 2 s 169; 1990 c 516 s 4; 1991 c 265 art 11 s 22; 1992 c 484 s 10; 1993 c 67 s 3,4; 1994 c 488 s 2,3,8; 1995 c 54 s 8,9; 1995 c 231 art 1 s 32; 1996 c 417 s 18,31; 1997 c 66 s 36-42; 1998 c 265 s 24,45; 1999 c 107 s 42,66; 2000 c 343 s 4; 2000 c 488 art 2 s 17; 2001 c 175 s 27-35,52; 1Sp2003 c 3 art 1 s 8; art 2 s 20; 2004 c 183 s 53-61

## **268.086 CONTINUED BIWEEKLY 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 biweekly 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 biweekly request or fails to file a continued biweekly 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 biweekly 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.

Subd. 2. **Continued biweekly request for unemployment benefits defined.** A continued biweekly request for unemployment benefits is a certification by an applicant, done on a biweekly basis, that the applicant is unemployed and meets the ongoing eligibility requirements for unemployment benefits under section 268.085 for a specific week or two-week period. A continued biweekly request shall include information on possible issues of disqualification in accordance with section 268.101, subdivision 1, paragraph (c).

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

- (1) by telephone under subdivision 4;
- (2) by electronic transmission under subdivision 5;



- (3) by mail under subdivision 6; or
- (4) by in-person interview under subdivision 7.

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

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

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

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

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

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

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

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

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

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

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

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

**Subd. 7. In-person continued biweekly request for unemployment benefits.** The commissioner may require any applicant who has been designated to make a continued biweekly 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 biweekly 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 biweekly 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 biweekly request form.

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

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

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

**History:** 1999 c 107 s 43,66; 2000 c 343 s 4; 2001 c 175 s 36,37; 1Sp2003 c 3 art 2 s 10,20

## **268.087 UNEMPLOYMENT BENEFITS DUE DECEASED PERSONS.**

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

An individual seeking payment shall complete an application prescribed by the commissioner and the payment of unemployment benefits shall discharge the obli-

gations to the applicant and no other individual shall claim or assert any right to those unemployment benefits.

**History:** (4337-26) *Ex*1936 c 2 s 6; 1937 c 43 s 2; 1937 c 306 s 4; 1939 c 443 s 5; 1941 c 554 s 5; 1943 c 650 s 4; 1945 c 376 s 5; 1949 c 605 s 9; 1953 c 97 s 9; 1953 c 699 s 10; 1965 c 741 s 14-16; 1969 c 6 s 34; 1971 c 942 s 9,10; 1973 c 599 s 6-8; 1975 c 104 s 2; 1975 c 336 s 13-15; 1975 c 359 s 23; 1976 c 163 s 59; 1976 c 271 s 78; 1977 c 4 s 7; 1977 c 297 s 15-18; 1978 c 612 s 1; 1979 c 24 s 1; 1979 c 181 s 9,10,19; 1980 c 508 s 8; 1Sp1982 c 1 s 23-25; 1983 c 290 s 168; 1983 c 372 s 20-24; 1985 c 248 s 44; 1986 c 444; 1987 c 362 s 18; 1987 c 384 art 1 s 55; 1987 c 385 s 20-22; 1989 c 209 art 2 s 1; 1989 c 282 art 2 s 169; 1990 c 516 s 4; 1991 c 265 art 11 s 22; 1992 c 484 s 10; 1993 c 67 s 3,4; 1994 c 488 s 2,3,8; 1995 c 54 s 8,9; 1995 c 231 art 1 s 32; 1996 c 417 s 18,31; 1997 c 66 s 36-42; 1998 c 265 s 24,45; 1999 c 107 s 66; 2000 c 343 s 4

**268.09 Subdivision 1. [Repealed, 1997 c 66 s 81]**

Subd. 1a. [Renumbered 268.095, subdivision 1]

Subd. 2. [Repealed, 1997 c 66 s 81]

Subd. 2a. [Renumbered 268.095, subd 2]

Subd. 3. [Renumbered subd 18]

Subd. 4. [Repealed, 1997 c 66 s 81]

Subd. 5. [Repealed, 1997 c 66 s 81]

Subd. 6. [Repealed, 1997 c 66 s 81]

Subd. 7. [Repealed, 1997 c 66 s 81]

Subd. 8. [Repealed, 1997 c 66 s 81]

Subd. 9. [Renumbered 268.095, subd 3]

Subd. 10. [Renumbered 268.095, subd 4]

Subd. 11. [Renumbered 268.095, subd 5]

Subd. 12. [Renumbered 268.095, subd 6]

Subd. 13. [Renumbered 268.095, subd 7]

Subd. 14. [Renumbered 268.095, subd 8]

Subd. 15. [Renumbered 268.095, subd 9]

Subd. 16. [Renumbered 268.095, subd 10]

Subd. 17. [Renumbered 268.095, subd 11]

Subd. 18. [Renumbered 268.095, subd 12]

**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 as defined in subdivision 3;

(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 second employment to have sufficient subsequent earnings to satisfy the disqualification that would otherwise be imposed under subdivision 10 for quitting the first employment;

(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 also had full-time employment in the base period, from which full-time employment the applicant separated because of nondisqualifying reasons, and the wage credits from the full-time employment are

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 inform the employer of the serious illness or injury and request accommodation and no reasonable accommodation is made available.

If the applicant's serious illness is chemical dependency, this exception shall not apply if the applicant was previously diagnosed as chemically dependent or had treatment for chemical dependency, and since that diagnosis or treatment 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) written statement that the applicant or the applicant's minor child is a victim of domestic abuse, provided by a social worker, member of the clergy, shelter worker, attorney at law, 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, within five calendar days after completion of a suitable temporary job assignment from a staffing service employer, (1) fails without good cause to affirmatively request an additional job assignment, or (2) refuses without good cause an additional suitable job assignment offered, 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, (1) to fail to contact the staffing service employer, or (2) to refuse an offered assignment.

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

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

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

(2) that is adverse to the worker; and

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

(b) The analysis required in paragraph (a) must be applied to the specific facts of each case.

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

(d) A reason for quitting employment shall not be considered a good reason caused by the employer for quitting if the reason for quitting occurred because of the applicant's employment misconduct.

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

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

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

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

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

(g) The definition of a good reason caused by the employer for quitting employment provided by this subdivision shall be exclusive and no other definition shall apply.

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

(1) the applicant was discharged because of employment misconduct as defined in subdivision 6; or

(2) the applicant was discharged because of aggravated employment misconduct as defined in subdivision 6a.

Subd. 4a. [Renumbered subd 6a]

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

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

Subd. 6. **Employment misconduct defined.** (a) Employment misconduct means any intentional, negligent, or indifferent conduct, on the job or off the job (1) that displays clearly a serious violation of the standards of behavior the employer has the right to

reasonably expect of the employee, or (2) that displays clearly a substantial lack of concern for the employment.

Inefficiency, inadvertence, simple unsatisfactory conduct, a single incident that does not have a significant adverse impact on the employer, conduct an average reasonable employee would have engaged in under the circumstances, poor performance because of inability or incapacity, good faith errors in judgment if judgment was required, or absence because of illness or injury with proper notice to the employer, are not employment misconduct.

(b) Conduct that was a direct result of the applicant's chemical dependency is not employment misconduct unless the applicant was previously diagnosed chemically dependent or had treatment for chemical dependency, and since that diagnosis or treatment has failed to make consistent efforts to control the chemical dependency.

(c) Conduct that was a result of the applicant, or the applicant's minor child, being a victim of domestic abuse as defined under section 518B.01, is not employment misconduct. Domestic abuse shall be shown as provided for in section 268.095, subdivision 1, clause (8).

(d) A driving offense in violation of sections 169A.20, 169A.31, or 169A.50 to 169A.53 that interferes with or adversely affects the employment is employment misconduct.

(e) The definition of employment misconduct provided by this subdivision shall be exclusive and no other definition shall apply.

**Subd. 6a. Aggravated employment misconduct defined.** (a) 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 substantially interfered with the employment or had a significant adverse effect on 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.

(b) 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 if the act substantially interfered with the employment or had a significant adverse effect on the employment.

(c) The definition of aggravated employment misconduct provided by this subdivision shall be exclusive and no other definition shall apply.

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

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

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

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

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

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

Subd. 11. **Application.** (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). Subdivision 8 shall only apply to offers of suitable employment made during the applicant's benefit year.

(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.

Subd. 12. [Renumbered 268.085, subd 13b]

**History:** (4337-27) *Ex1936 c 2 s 7; 1937 c 401 s 1; 1939 c 443 s 6; 1941 c 554 s 6; 1943 c 650 s 5; 1945 c 376 s 6; 1947 c 432 s 7; 1965 c 741 s 17; 1967 c 342 s 1; 1967 c 573 s 5; 1969 c 42 s 1; 1971 c 942 s 11; 1973 c 23 s 1; 1973 c 599 s 9; 1974 c 477 s 1; 1975 c 336 s 16; 1977 c 4 s 8; 1977 c 242 s 1; 1977 c 297 s 19; 1978 c 618 s 1; 1979 c 181 s 11-13; 1980 c 508 s 9; 1982 c 619 s 1; 1Sp1982 c 1 s 26-28; 1983 c 372 s 26,27; 1986 c 444; 1987 c 362 s 19,20; 1987 c 385 s 23,24; 1989 c 65 s 8; 1989 c 209 art 2 s 1; 1992 c 484 s 11,12; 1993 c 67 s 5-7; 1994 c 488 s 4,8; 1995 c 229 art 3 s 15; 1996 c 417 s 19,20,31; 1997 c 66 s 43-54,79; 1998 c 265 s 25-29,44,45; 1999 c 107 s 44,66; 2000 c 343 s 4; 2000 c 478 art 2 s 7; 2001 c 175 s 38-41,52; 1Sp2003 c 3 art 2 s 11-14,20; 2004 c 183 s 62-65,86*

**268.10** [Repealed, 1996 c 417 s 32]

## **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 unemployment benefits under section 268.085, the applicant shall be ineligible for unemployment 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 biweekly requests for unemployment benefits pursuant to section 268.086. Each applicant who stops filing continued biweekly requests during the benefit year and later begins filing continued biweekly 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 biweekly 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 biweekly 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 unemployment 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 send to the applicant and employer, by mail or electronic transmission, 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 send to the applicant and that employer, by mail or electronic transmission, 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 send to the applicant and involved employer, by mail or electronic transmission, 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 sending. 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 send to an applicant a determination where the applicant has satisfied any otherwise potential disqualification under section 268.095, subdivision 10.

**Subd. 3. Eligibility determination.** (a) The commissioner shall determine any issue of eligibility raised by an employer, and send to the applicant and that employer, by mail or electronic transmission, a determination of eligibility or a determination of ineligibility, as is appropriate.

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

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

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

(d) A determination of eligibility or determination of ineligibility shall be final unless an appeal is filed by the applicant or notified employer within 30 calendar days after sending. 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.

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

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

**Subd. 3a. Direct hearing.** Regardless of any provision of the Minnesota Unemployment Insurance Law, the commissioner or an unemployment law judge or a senior unemployment review judge may, prior to a determination being made under this chapter, refer any issue of disqualification, any issue of eligibility, or any other issue under this chapter, directly for hearing in accordance with section 268.105, subdivision 1. The status of the issue shall be the same as if a determination had been made and an appeal filed.

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

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

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

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

**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 42, 43, 52; 1Sp2003 c 3 art 2 s 20; 2004 c 183 s 66-69

## 268.103 APPEALS BY ELECTRONIC TRANSMISSION.

**Subdivision 1. In commissioner's discretion.** The commissioner shall have the discretion to allow an appeal to be filed by electronic transmission. If the commissioner allows an appeal to be filed by electronic transmission, that shall be clearly set out on the determination or decision subject to appeal.

The commissioner may restrict the manner, format, and conditions under which an appeal by electronic transmission may be filed. Any restrictions as to days, hours, telephone number, electronic address, or other conditions, shall be clearly set out on the determination or decision subject to appeal.

All information requested by the commissioner when an appeal is filed by electronic transmission must be supplied or the communication shall not constitute an appeal.

**Subd. 2. Appeal by mail.** (a) The commissioner must allow an appeal to be filed by mail even if an appeal by electronic transmission is allowed.

(b) A written statement delivered or mailed to the department that could reasonably be interpreted to mean that an involved applicant or employer is in disagreement with a specific determination or decision shall be considered an appeal. No specific words need be used for the written statement to be considered an appeal.

**Subd. 3.** [Repealed by amendment, Laws 2004 c 183 s 70]

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

**History:** 1997 c 66 s 59; 1999 c 107 s 46; 2004 c 183 s 70

**268.105 APPEALS.**

Subdivision 1. **Evidentiary hearing by an unemployment law judge.** (a) Upon a timely appeal having been filed, the department shall send a notice of appeal to all involved parties that an appeal has been filed, that a de novo due process evidentiary hearing will be scheduled, and that the parties have certain rights and responsibilities regarding the hearing. The department shall set a time and place for a de novo due process evidentiary hearing and send notice to any involved applicant and any involved employer, by mail or electronic transmission, not less than ten calendar days prior to the date of the hearing.

(b) The evidentiary hearing shall be conducted by an unemployment law judge without regard to any common law burden of proof as an evidence gathering inquiry and not an adversarial proceeding. The unemployment law judge shall ensure that all relevant facts are clearly and fully developed. The department shall adopt rules of evidentiary hearings. The rules need not conform to common law or statutory rules of evidence and other technical rules of procedure. The department shall have discretion regarding the method by which the evidentiary hearing is conducted. A report of any employee of the department, except a determination, made in the regular course of the employee's duties, shall be competent evidence of the facts contained in it.

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

(d) Only employees of the department shall serve as unemployment law judges. A senior unemployment review judge may personally hear or transfer to another unemployment law judge any proceedings pending before an unemployment law judge. Any proceedings removed to a senior unemployment review judge shall be heard in accordance with this subdivision.

Subd. 2. **De novo review by a senior unemployment review judge.** (a) Except as provided under subdivision 2a, any involved applicant or involved employer may appeal a decision of an unemployment law judge and obtain a de novo review by a senior unemployment review judge by filing with a senior unemployment review judge an appeal within 30 calendar days after the sending of the unemployment law judge's decision. A senior unemployment review judge within the same period of time may, on a senior unemployment review judge's own motion, order a de novo review of any decision of an unemployment law judge.

(b) A senior unemployment review judge shall be an attorney who is an employee of the department.

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

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

(e) The senior unemployment review judge shall send, by mail or electronic transmission, to any involved party the senior unemployment review judge's findings of fact and decision. The decision of the senior unemployment review judge is the final

decision of the department. Unless judicial review is sought under subdivision 7, the decision of the senior unemployment review judge shall become final 30 calendar days after sending.

**Subd. 2a. Orders by a senior unemployment review judge.** (a) If an applicant or employer files an appeal in a matter where an unemployment law judge affirmed a determination issued under section 268.101, and there is no dispute regarding the determinative facts, a senior unemployment review judge shall have the discretion to decline to conduct a de novo review. If de novo review is declined, the senior unemployment review judge shall issue an order adopting the unemployment law judge's findings of fact and decision.

(b) If an involved party fails, without good cause, to appear and participate at the evidentiary hearing conducted by an unemployment law judge under subdivision 1, and that party files an appeal, a senior unemployment review judge shall have the discretion to decline to conduct a de novo review. If de novo review is declined, the senior unemployment review judge shall issue an order dismissing the appeal.

Submission of a written statement shall not constitute an appearance and participation at an evidentiary hearing for purposes of this paragraph.

All involved parties must be notified of this paragraph with the notice of appeal and notice of hearing provided for under subdivision 1. The senior unemployment review judge shall allow for the submission of a written argument on the issue of good cause before dismissing an appeal under this paragraph.

"Good cause" for purposes of this paragraph is a compelling reason that would have prevented a reasonable person acting with due diligence from appearing and participating at the evidentiary hearing.

(c) The senior unemployment review judge shall send to any involved party the order issued under this subdivision. The order may be sent by mail or electronic transmission. Unless judicial review is sought under subdivision 7, the order of a senior unemployment review judge becomes final 30 calendar days after sending.

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

(b) The appeal shall, by order, be dismissed if a notice of withdrawal is filed, unless an unemployment law judge or a senior unemployment review judge, by order, directs that further adjudication is required for a proper result.

(c) A notice of withdrawal may be filed by mail or by electronic transmission.

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

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

(c) If a senior unemployment review judge's decision modifies or reverses an unemployment law judge's decision allowing unemployment benefits to an applicant, any unemployment benefits paid pursuant to the unemployment law judge's decision is considered an overpayment of those unemployment benefits under section 268.18, subdivision 1.

(d) If a senior unemployment review judge affirms an unemployment law judge's decision on an issue of disqualification that allows unemployment benefits to an applicant and the senior unemployment review judge's decision or order is reversed by the Minnesota Court of Appeals or the Supreme Court of Minnesota, the applicant shall not be disqualified from unemployment benefits under section 268.095, subdivision 10.

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

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

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

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

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

**Subd. 5a. No collateral estoppel.** No findings of fact or decision or order issued by an unemployment law judge or a senior unemployment review judge may be held conclusive or binding or used as evidence in any separate or subsequent action in any other forum, be it contractual, administrative, or judicial, except proceedings provided for under this chapter, regardless of whether the action involves the same or related parties or involves the same facts.

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

(b) Except for services provided by an attorney-at-law, an applicant shall not be charged fees, costs, or disbursements of any kind in a proceeding before an unemployment law judge, a senior unemployment review judge, the Minnesota Court of Appeals, or Supreme Court of Minnesota.

**Subd. 7. Judicial review.** (a) The Minnesota Court of Appeals shall, by writ of certiorari to the department, review the senior unemployment review judge's decision under subdivision 2 or order under subdivision 2a, provided a petition for the writ is filed with the court and a copy is served upon the senior unemployment review judge or the commissioner and any other involved party within 30 calendar days of the sending of the senior unemployment review judge's decision under subdivision 2 or order under subdivision 2a.

(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 department 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 department the cost of preparing the transcript. That money shall be credited to the administration account.

(c) Upon issuance by the Minnesota Court of Appeals of a writ of certiorari as a result of an applicant's petition, the department shall furnish to the applicant at no cost a written transcript of any 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 department shall be considered the primary responding party to any judicial action involving a senior unemployment review judge's decision or order. The department may be represented by an attorney who is an employee of the department.

**History:** 1995 c 54 s 11; 1996 c 417 s 22,31; 1997 c 66 s 60; 1998 c 265 s 31,44; 1999 c 107 s 47,66; 2000 c 343 s 4; 2001 c 175 s 44; 1Sp2003 c 3 art 2 s 15; 2004 c 183 s 71

**268.11** [Renumbered 268.042]

**268.115** MS 1974 [Expired]

### **268.115 EXTENDED UNEMPLOYMENT BENEFITS.**

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

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

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

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

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

- (i) for that week and the prior 12 weeks, the rate of insured unemployment:
  - (a) equaled or exceeded 120 percent of the average of the rates for the corresponding 13-week period ending in each of the prior two calendar years, and was five percent or more; or

- (b) equaled or exceeded six percent; or

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

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

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

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

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

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

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

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

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

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

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

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

(1) is an "exhaustee";

(2) has satisfied the same requirements as those for regular unemployment benefits under section 268.069;

(3) has wage credits of not less than 40 times the weekly unemployment benefit amount; and

(4) is not subject to a denial of extended unemployment benefits under subdivision 9.

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

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

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

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

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

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

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

(b) For the purpose of this subdivision "suitable employment" means any employment that is within the applicant's capabilities and that has a gross average weekly wage that exceeds the applicant's weekly unemployment benefit amount. The employment

must pay wages not less than the higher of the federal minimum wage without regard to any exemption, or the applicable state minimum wage.

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

- (1) the position was not offered to the applicant in writing;
- (2) the position was not listed with the job service; or

(3) the applicant furnishes satisfactory evidence that prospects for obtaining employment in the applicant's customary occupation within a reasonably short period are good. If the evidence is satisfactory, the determination of whether any employment is suitable shall be made in accordance with the definition of suitable employment in section 268.035, subdivision 23a.

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

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

**History:** 1971 c 61 s 1; 1974 c 355 s 58; 1975 c 1 s 1; 1975 c 336 s 12; 1977 c 297 s 13,14; 1Sp1982 c 1 s 16-21; 1983 c 372 s 19; 1985 c 248 s 70; 1986 c 444; 1987 c 362 s 16; 1992 c 484 s 9; 1993 c 13 art 1 s 33; 1997 c 66 s 33-35,79,80; 1998 c 265 s 44,45; 1999 c 107 s 48,66; 2000 c 343 s 4; 1Sp2003 c 3 art 2 s 20; 2004 c 183 s 72

**268.12 Subdivision 1.** [Repealed, 1Sp1985 c 14 art 9 s 78 subd 1]

Subd. 1a. [Repealed, 1Sp1985 c 14 art 9 s 78 subd 1]

Subd. 2. [Repealed, 1997 c 66 s 81]

Subd. 3. [Repealed, 1983 c 268 s 2]

Subd. 4. [Repealed, 1997 c 66 s 81]

Subd. 5. [Repealed, 1997 c 66 s 81]

Subd. 6. [Repealed, 1989 c 343 s 7]

Subd. 7. [Repealed, 1997 c 66 s 81]

Subd. 8. [Renumbered 268.186]

Subd. 9. [Repealed, 1995 c 54 s 29]

Subd. 9a. [Renumbered 268.188]

Subd. 10. [Repealed, 1995 c 54 s 29]

Subd. 11. [Repealed, 1997 c 66 s 81]

Subd. 12. [Renumbered 268.19]

Subd. 13. [Repealed, 1995 c 54 s 29]

Subd. 14. [Repealed, 1949 c 605 s 15]

**268.121** [Renumbered 268.044]

## **268.125 ADDITIONAL UNEMPLOYMENT BENEFITS.**

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

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

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

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



Subd. 2. **Payment of unemployment benefits.** Additional unemployment benefits are payable from the trust fund.

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

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

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

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

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

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

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

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

**History:** 1987 c 362 s 17; 1994 c 488 s 8; 1994 c 503 s 1-3; 1996 c 417 s 13-15; 1997 c 66 s 79; 2Sp1997 c 2 s 18,19; 1998 c 265 s 32; 1999 c 107 s 49-51,66; 2000 c 343 s 4; 1Sp2003 c 3 art 2 s 20; 2004 c 183 s 73

**268.13** Subdivision 1. (a) [Renumbered 268.042, subd 4]

(b) [Renumbered 268.131, subdivision 1, para (a)]

(c) [Renumbered 268.131, subdivision 1, para (b)]

Subd. 2. [Renumbered 268.194, subd 3a]

Subd. 3. [Repealed, 1998 c 265 s 46]

Subd. 4. [Renumbered 268.131, subd 2]

Subd. 5. [Repealed, 1998 c 265 s 46]

## **268.131 RECIPROCAL UNEMPLOYMENT BENEFIT ARRANGEMENTS.**

Subdivision 1. **Cooperation with other state and federal government.** (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 trust fund, by the other state or the federal government, for unemployment benefits paid from the trust 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 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 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 biweekly requests and the payment of unemployment benefits under this law or under a similar law of a foreign government.

**History:** (4337-31) *Ex1936 c 2 s 11; 1937 c 306 s 8; 1939 c 443 s 9; 1941 c 554 s 10; 1943 c 650 s 8; 1945 c 376 s 10; 1947 c 432 s 8-10; 1965 c 45 s 45; 1969 c 9 s 64; 1971 c 942 s 13; 1979 c 181 s 16; 1986 c 444; 1989 c 209 art 2 s 1; 1996 c 417 s 31; 1997 c 66 s 79; 1998 c 265 s 33-35,45; 1999 c 107 s 66; 2000 c 343 s 4; 2001 c 175 s 45,52; 1Sp2003 c 3 art 2 s 20*

## 268.135 SHARED WORK PLAN.

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

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

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

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

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

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

(1) specifies the employees in the affected group;

(2) applies to only one affected group;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**History:** 1994 c 503 s 4; 1996 c 417 s 16; 1997 c 66 s 79,80; 1998 c 265 s 45; 1999 c 107 s 52,66; 2000 c 343 s 4; 2004 c 183 s 74-76

#### **268.14 Subdivision 1. [Renumbered 268.198, subdivision 1]**

Subd. 2. [Renumbered 268.198, subd 2]

Subd. 3. [Repealed, 1997 c 66 s 81]

Subd. 4. [Repealed, 1997 c 66 s 81]

Subd. 5. [Renumbered 268.198, subd 3]

Subd. 6. [Expired]

#### **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 down to the next lower 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, rounded down to the next lower whole dollar. 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.

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

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

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

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

**History:** 1996 c 417 s 17; 1997 c 66 s 79; 1998 c 254 art 1 s 73; 1999 c 107 s 53,66; 2000 c 343 s 4; 1Sp2001 c 4 art 2 s 23; 1Sp2003 c 3 art 2 s 20; 2004 c 183 s 77

**268.15** Subdivision 1. [Renumbered 268.196, subdivision 1]

Subd. 2. [Renumbered 268.196, subd 2]

Subd. 3. [Renumbered 268.196, subd 3]

Subd. 4. [Repealed, 2Sp1981 c 1 s 8]

## **268.155 CHILD SUPPORT DEDUCTED FROM UNEMPLOYMENT BENEFITS.**

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

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

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

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

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

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

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

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

Subd. 4. **Payment.** Any amount deducted and withheld shall be paid to the child support agency, but shall for all purposes be treated as if it were paid to the applicant

as unemployment benefits and paid by the applicant to the child support agency in satisfaction of the applicant's child support obligations.

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

Subd. 6. [Renumbered subd 5]

**History:** *ISp1982 c 1 s 22; 1986 c 444; 1987 c 384 art 2 s 67; 1994 c 488 s 8; 1996 c 417 s 10-12; 1997 c 66 s 79,80; 1997 c 203 art 6 s 92; 1999 c 107 s 54,66; 2000 c 343 s 4*

**268.16** Subdivision 1. [Renumbered 268.057, subd 5]

Subd. 1a. [Renumbered 268.057, subd 6]

Subd. 2. [Renumbered 268.057, subdivision 1]

Subd. 3. [Repealed, ISp1982 c 1 s 43]

Subd. 3a. [Renumbered 268.057, subd 4]

Subd. 4. [Renumbered 268.067]

Subd. 5. [Renumbered 268.057, subd 10]

Subd. 6. [Renumbered 268.057, subd 7]

Subd. 7. [Renumbered 268.057, subd 8]

Subd. 8. [Repealed, 1997 c 66 s 81]

Subd. 9. [Renumbered 268.057, subd 9]

**268.161** Subdivision 1. [Renumbered 268.058, subdivision 1]

Subd. 1a. [Renumbered 268.058, subd 2]

Subd. 2. [Renumbered 268.058, subd 6]

Subd. 3. [Repealed, 1997 c 66 s 81]

Subd. 4. [Renumbered 268.058, subd 5]

Subd. 5. [Renumbered 268.058, subd 4]

Subd. 6. [Renumbered 268.057, subd 2]

Subd. 7. [Renumbered 268.057, subd 3]

Subd. 8. [Renumbered 268.058, subd 3]

Subd. 9. [Renumbered 268.063]

**268.162** [Renumbered 268.064]

**268.163** [Renumbered 268.065]

**268.164** [Renumbered 268.0625]

**268.165** [Repealed, 1997 c 66 s 81]

**268.166** [Renumbered 268.066]

**268.167** [Renumbered 268.059]

**268.17** [Renumbered 268.192]

## **268.18 UNEMPLOYMENT BENEFIT OVERPAYMENTS.**

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

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

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

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

(e) If under paragraph (c) or (d) the reduced unemployment benefits as a result of a 50 percent offset is not a whole dollar amount, it shall be rounded down to the next lower whole dollar.

(f) Unemployment benefits paid for weeks more than three years prior to the discovery of overpayment under this subdivision are not overpaid unemployment benefits.

**Subd. 2. Overpayment due to fraud.** (a) Any applicant who receives unemployment benefits by knowingly misrepresenting, misstating, or failing to disclose any material fact, or who makes a false statement or representation without a good faith belief as to the correctness of the statement or representation, has committed fraud. After the discovery of facts indicating fraud, the commissioner shall make a determination that the applicant obtained unemployment benefits by fraud and that the applicant must promptly repay the unemployment benefits to the trust fund. In addition, the commissioner shall assess a penalty equal to 25 percent of the amount fraudulently obtained. If the applicant had a prior overpayment due to fraud, the commissioner shall, on the present overpayment, assess a penalty equal to 50 percent of the amount fraudulently obtained. This penalty is in addition to penalties under section 268.182.

(b) Unless the applicant files an appeal within 30 calendar days after the sending of the determination of overpayment by fraud to the applicant by mail or electronic transmission, the determination shall become final. Proceedings on the appeal shall be conducted in accordance with section 268.105.

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

(d) If an applicant has been overpaid unemployment benefits under the law of another state because of fraud and that state certifies that the applicant is liable to repay the unemployment benefits and requests the commissioner to recover the

overpayment, the commissioner may offset from future unemployment benefits otherwise payable the amount of overpayment.

(c) A determination of overpayment by fraud may only be made within four years of the effective date of the benefit account from which the unemployment benefits were fraudulently obtained.

Subd. 2a. [Renumbered subd 3a]

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 notification, by mail or electronic transmission, to the applicant.

Subd. 3. [Renumbered 268.182]

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

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

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

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

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

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

Subd. 5. [Repealed, 1997 c 66 s 81]

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

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

Subd. 6. [Renumbered 268.184]

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

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

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

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

(e) Section 16A.626 applies to the repayment by an applicant of any overpayment, penalty, or interest under this section.

**History:** (4337-36) Ex1936 c 2 s 16; 1941 c 554 s 15; 1951 c 442 s 11; 1953 c 97 s 18; 1969 c 567 s 3; 1973 c 254 s 3; 1975 c 336 s 24; 1977 c 4 s 10; 1977 c 430 s 25 subd 1; 1979 c 181 s 17,18; 1Sp1982 c 1 s 37-40; 1983 c 216 art 1 s 42,87; 1983 c 372 s 45,46; 1985 c 248 s 70; 1Sp1985 c 14 art 9 s 75; 1986 c 444; 1987 c 385 s 40-45; 1988 c 712 s 3; 1989 c 209 art 2 s 1; 1990 c 566 s 8; 1992 c 484 s 15; 1994 c 483 s 1; 1995 c 54 s 21-24; 1996 c 417 s 29,31; 1997 c 66 s 71-73,79; 1998 c 265 s 36,45; 1999 c 107 s 55,66; 2000 c 343 s 4; 2001 c 175 s 46; 1Sp2003 c 3 art 2 s 16,17,20; 2004 c 183 s 78-81; 2004 c 206 s 52

## **268.182 APPLICANT'S FALSE REPRESENTATIONS; CONCEALMENT OF FACTS; PENALTY.**

Subdivision 1. **Criminal penalties.** Whoever obtains, or attempts to obtain, or aids or abets any individual to obtain by means of an intentional false statement or representation, by intentional concealment of a material fact, or by impersonation or other fraudulent means, unemployment benefits that the individual is not entitled to or unemployment benefits greater than the individual is entitled to under this chapter, or under the law of any state or of the federal government, either personally or for any other individual, is guilty of theft and shall be sentenced pursuant to section 609.52.

Subd. 2. **Administrative penalties.** Any individual who knowingly makes a false statement or representation, who knowingly fails to disclose a material fact, or who makes a false statement or representation without a good faith belief as to the correctness of the statement or representation, in order to obtain or in an attempt to obtain unemployment benefits may be assessed, in addition to any other penalties, an administrative penalty of denial of unemployment benefits for one to 52 weeks that the individual would otherwise be entitled to unemployment benefits. A denial shall not apply to any week more than two years after the week that the penalty was determined. A determination of denial shall be sent to the individual by mail or electronic transmission. Unless an appeal is filed within 30 calendar days of sending, the determination shall be final. Proceeding on the appeal shall be conducted in accordance with section 268.105.

**History:** Ex1936 c 2 s 16; 1941 c 554 s 15; 1951 c 442 s 11; 1953 c 97 s 18; 1969 c 567 s 3; 1973 c 254 s 3; 1975 c 336 s 24; 1977 c 4 s 10; 1977 c 430 s 25 subd 1; 1979 c 181 s 17,18; 1Sp1982 c 1 s 37-40; 1983 c 216 art 1 s 42,87; 1983 c 372 s 45,46; 1985 c 248 s 70; 1Sp1985 c 14 art 9 s 75; 1986 c 444; 1987 c 385 s 40-45; 1988 c 712 s 3; 1989 c 209 art 2 s 1; 1990 c 566 s 8; 1992 c 484 s 15; 1994 c 483 s 1; 1995 c 54 s 21-24; 1996 c 417 s 29,31; 1997 c 66 s 74,79; 1998 c 265 s 37; 1999 c 107 s 56,66; 2000 c 343 s 4; 2004 c 183 s 82; 2004 c 206 s 52

## **268.184 EMPLOYER MISCONDUCT; PENALTY.**

Subdivision 1. **Administrative penalties.** (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



fraudulently, 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 avoid any payment required from an employer under this chapter or section 116L.20, the employer shall be penalized \$500, or 50 percent of the reduced unemployment benefits or payment required, whichever is greater.

(c) If the commissioner finds that an employer failed or refused to honor a subpoena issued under section 268.105, subdivision 4, or section 268.188, the employer shall be penalized \$500 and any costs of enforcing the subpoena, including attorney fees.

(d) 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.

(e) 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.

**Subd. 2. Criminal penalties.** 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 avoid or reduce any payment required from an employer under this chapter or section 116L.20, or to prevent or reduce the payment of unemployment benefits to any applicant, is guilty of a gross misdemeanor unless the underpayment exceeds \$500, in that case the individual is guilty of a felony.

**History:** *Ex1936 c 2 s 16; 1941 c 554 s 15; 1951 c 442 s 11; 1953 c 97 s 18; 1969 c 567 s 3; 1973 c 254 s 3; 1975 c 336 s 24; 1977 c 4 s 10; 1977 c 430 s 25 subd 1; 1979 c 181 s 17,18; 1Sp1982 c 1 s 37-40; 1983 c 216 art 1 s 42,87; 1983 c 372 s 45,46; 1985 c 248 s 70; 1Sp1985 c 14 art 9 s 75; 1986 c 444; 1987 c 385 s 40-45; 1988 c 712 s 3; 1989 c 209 art 2 s 1; 1990 c 566 s 8; 1992 c 484 s 15; 1994 c 483 s 1; 1995 c 54 s 21-24; 1996 c 417 s 29,31; 1997 c 66 s 76,79; 1998 c 265 s 38; 1999 c 107 s 56,66; 2000 c 343 s 4; 2001 c 175 s 47; 2004 c 183 s 83*

## **268.186 RECORDS; AUDITS.**

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

(b) Any employer that refuses to allow an audit of its records by the department, or that fails to make all necessary records available for audit in Minnesota upon request of the commissioner, may be assessed an administrative penalty of \$500. The penalty collected shall be credited to the administration account to be used by the commissioner to ensure integrity in the administration of the unemployment insurance program.

(c) The commissioner may make summaries, compilations, photographs, duplications, or reproductions of any records, or reports that the commissioner considers advisable for the preservation of the information contained therein. Any summaries, compilations, photographs, duplications, or reproductions shall be admissible in any proceeding under this chapter. The commissioner may duplicate records, reports,

summaries, compilations, instructions, determinations, or any other written or recorded matter pertaining to the administration of this chapter.

(d) Regardless of any law to the contrary, the commissioner may provide for the destruction of any records, reports, or reproductions thereof, or other papers that are no longer necessary for the administration of this chapter, including any required audit. In addition, the commissioner may provide for the destruction or disposition of any record, report, or other paper from which the information has been electronically captured and stored, or that has been photographed, duplicated, or reproduced.

**History:** *Ex1936 c 2 s 10; 1937 c 306 s 7; 1939 c 441 s 42; 1939 c 443 s 8,10; 1941 c 554 s 9; 1943 c 650 s 7; 1945 c 376 s 9; 1947 c 600 s 3-6; 1949 c 605 s 15; 1949 c 739 s 8; 1951 c 442 s 6-10; 1951 c 713 s 29; 1953 c 97 s 15; 1953 c 603 s 1; 1953 c 612 s 1; 1955 c 847 s 22; 1957 c 883 s 7; 1965 c 45 s 42-44; 1965 c 741 s 18; 1967 c 770 s 1; 1969 c 9 s 63; 1969 c 310 s 2; 1969 c 567 s 1,3; 1969 c 854 s 11,12; 1969 c 1129 art 8 s 7; 1971 c 942 s 12; 1973 c 254 s 1,3; 1973 c 492 s 14; 1974 c 241 s 1; 1975 c 315 s 19; 1975 c 336 s 20,21; 1977 c 172 s 2; 1977 c 237 s 1; 1977 c 297 s 20; 1977 c 305 s 31; 1977 c 430 s 25 subd 1; 1978 c 674 s 60; 1979 c 181 s 15; 1980 c 615 s 37; 1981 c 311 s 39; 1982 c 424 s 130; 1982 c 545 s 23,24; 1Sp1982 c 1 s 31,32; 1983 c 216 art 1 s 87; 1983 c 247 s 114; 1983 c 260 s 58; 1983 c 312 art 8 s 2; 1983 c 372 s 37,38; 1984 c 544 s 89; 1985 c 248 s 70; 1Sp1985 c 14 art 9 s 75; 1986 c 444; 1987 c 165 s 1; 1987 c 312 art 1 s 26 subd 2; 1987 c 362 s 23; 1987 c 385 s 25; 1989 c 65 s 11; 1989 c 209 art 2 s 1; 1990 c 516 s 6,7; 1991 c 202 s 16; 1993 c 67 s 10; 1994 c 483 s 1; 1994 c 488 s 8; 1995 c 54 s 12; 1996 c 417 s 23,31; 1996 c 440 art 1 s 47; 1997 c 66 s 62,79; 1998 c 265 s 44; 1999 c 107 s 57,66; 2000 c 343 s 4; 1Sp2003 c 1 art 2 s 77; 2004 c 183 s 84*

#### 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.

(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:** *Ex1936 c 2 s 10; 1937 c 306 s 7; 1939 c 441 s 42; 1939 c 443 s 8,10; 1941 c 554 s 9; 1943 c 650 s 7; 1945 c 376 s 9; 1947 c 600 s 3-6; 1949 c 605 s 15; 1949 c 739 s 8; 1951 c 442 s 6-10; 1951 c 713 s 29; 1953 c 97 s 15; 1953 c 603 s 1; 1953 c 612 s 1; 1955 c 847 s 22; 1957 c 883 s 7; 1965 c 45 s 42-44; 1965 c 741 s 18; 1967 c 770 s 1; 1969 c 9 s 63; 1969 c 310 s 2; 1969 c 567 s 1,3; 1969 c 854 s 11,12; 1969 c 1129 art 8 s 7; 1971 c 942 s 12; 1973 c 254 s 1,3; 1973 c 492 s 14; 1974 c 241 s 1; 1975 c 315 s 19; 1975 c 336 s 20,21; 1977 c 172 s 2; 1977 c 237 s 1; 1977 c 297 s 20; 1977 c 305 s 31; 1977 c 430 s 25 subd 1; 1978 c 674 s 60; 1979 c 181 s 15; 1980 c 615 s 37; 1981 c 311 s 39; 1982 c 424 s 130; 1982 c 545 s 23,24; 1Sp1982 c 1 s 31,32; 1983 c 216 art 1 s 87; 1983 c 247 s 114; 1983 c 260 s 58; 1983 c 312 art 8 s 2; 1983 c 372 s 37,38; 1984 c 544 s 89; 1985 c 248 s 70; 1Sp1985 c 14 art 9 s 75; 1986 c 444; 1987 c 165 s 1; 1987 c 312 art 1 s 26 subd 2; 1987 c 362 s 23; 1987 c 385 s 25; 1989 c 65 s 11; 1989 c 209 art 2 s 1; 1990 c 516 s 6,7; 1991 c 202 s 16; 1993 c 67 s 10; 1994 c 483 s 1; 1994 c 488 s 8; 1995 c 54 s 12; 1996 c 417 s 23,31; 1996 c 440 art 1 s 47; 1997 c 66 s 63,79; 1998 c 265 s 44; 1999 c 107 s 58,66; 2001 c 175 s 52; 2004 c 206 s 52*

#### 268.19 DATA PRIVACY.

**Subdivision 1. Use of data.** (a) Except as otherwise provided by this section, data gathered from any person pursuant to the administration of the Minnesota Unemployment Insurance 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. A subpoena shall not be considered a court order. 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 any other state or any federal agency charged with the administration of an unemployment insurance program;
- (3) any agency responsible for the maintenance of a system of public employment offices for the purpose of assisting individuals in obtaining employment;
- (4) human rights agencies within Minnesota that have enforcement powers;
- (5) the Department of Revenue only to the extent necessary for its duties under Minnesota laws;
- (6) public and private agencies responsible for administering publicly financed assistance programs for the purpose of monitoring the eligibility of the program's recipients;
- (7) the Department of Labor and Industry and the Division of Insurance Fraud Prevention in the Department of Commerce on an interchangeable basis with the department for uses consistent with the administration of their duties under Minnesota law;
- (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 or food support, 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 a person who 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 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) Data gathered by the department pursuant to the administration of the Minnesota unemployment insurance program 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. 1a. **Wage detail data.** (a) Wage and employment data gathered pursuant to section 268.044 may be disseminated to and used, without the consent of the subject of the data, by an agency of another state that is designated as the performance accountability and consumer information agency for that state pursuant to Code of Federal Regulations, volume 20, part 663.510(c), in order to carry out the requirements of the Workforce Investment Act of 1998, United States Code, title 29, sections 2842 and 2871.

(b) The commissioner may enter into a data exchange agreement with an employment and training service provider under section 116L.17, or the Workforce Investment Act of 1998, United States Code, title 29, section 2864, under which the commissioner, with the consent of the subject of the data, may furnish data on the

quarterly wages paid and number of hours worked on those individuals who have received employment and training services from the provider. With the initial consent of the subject of the data, this data may be shared for up to three years after termination of the employment and training services provided to the individual without execution of an additional consent. This data shall be furnished solely for the purpose of evaluating the employment and training services provided. The data subject's ability to receive service is not affected by a refusal to give consent under this paragraph. The consent form must state this fact.

**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 Law.

(b) The commissioner may disseminate an employer's name and address and the name and address of any employer's unemployment insurance processing agent in order to administer the Minnesota unemployment insurance program.

(c) Information obtained pursuant to the Minnesota Unemployment Insurance 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:** *Ex1936 c 2 s 10; 1937 c 306 s 7; 1939 c 441 s 42; 1939 c 443 s 8,10; 1941 c 554 s 9; 1943 c 650 s 7; 1945 c 376 s 9; 1947 c 600 s 3-6; 1949 c 605 s 15; 1949 c 739 s 8; 1951 c 442 s 6-10; 1951 c 713 s 29; 1953 c 97 s 15; 1953 c 603 s 1; 1953 c 612 s 1; 1955 c 847 s 22; 1957 c 883 s 7; 1965 c 45 s 42-44; 1965 c 741 s 18; 1967 c 770 s 1; 1969 c 9 s 63; 1969 c 310 s 2; 1969 c 567 s 1,3; 1969 c 854 s 11,12; 1969 c 1129 art 8 s 7; 1971 c 942 s 12; 1973 c 254 s 1,3; 1973 c 492 s 14; 1974 c 241 s 1; 1975 c 315 s 19; 1975 c 336 s 20,21; 1977 c 172 s 2; 1977 c 237 s 1; 1977 c 297 s 20; 1977 c 305 s 31; 1977 c 430 s 25 subd 1; 1978 c 674 s 60; 1979 c 181 s 15; 1980 c 615 s 37; 1981 c 311 s 39; 1982 c 424 s 130; 1982 c 545 s 23,24; 1Sp1982 c 1 s 31,32; 1983 c 216 art 1 s 87; 1983 c 247 s 114; 1983 c 260 s 58; 1983 c 312 art 8 s 2; 1983 c 372 s 37,38; 1984 c 544 s 89; 1985 c 248 s 70; 1Sp1985 c 14 art 9 s 75; 1986 c 444; 1987 c 165 s 1; 1987 c 312 art 1 s 26 subd 2; 1987 c 362 s 23; 1987 c 385 s 25; 1989 c 65 s 11; 1989 c 209 art 2 s 1; 1990 c 516 s 6,7; 1991 c 202 s 16; 1993 c 67 s 10; 1994 c 483 s 1; 1994 c 488 s 8; 1995 c 54 s 12; 1996 c 417 s 21,23,31; 1996 c 440 art 1 s 47; 1997 c 66 s 55-58,79; 1998 c 265 s 30; 1998 c 273 s 13; 1998 c 371 s 11; 1999 c 107 s 45,66; 2000 c 343 s 4; 2000 c 468 s 25; 2001 c 175 s 52; 1Sp2003 c 3 art 2 s 20; 1Sp2003 c 4 s 1; 1Sp2003 c 8 art 2 s 16; 1Sp2003 c 14 art 1 s 106; 2004 c 183 s 85; 2004 c 206 s 52; 2004 c 269 art 1 s 10; 2004 c 290 s 31,32*

## 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 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 biweekly 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.

**Subd. 2. No assignment of unemployment benefits; exemptions.** Any assignment, pledge, or encumbrance of unemployment benefits shall be void. Unemployment benefits shall be exempt from levy, execution, attachment, or any other remedy provided for the collection of debt. Any waiver of this subdivision shall be void.

**History:** *Ex1936 c 2 s 15; 1941 c 554 s 14; 1986 c 444; 1989 c 209 art 2 s 1; 1996 c 417 s 31; 1997 c 66 s 79; 1998 c 265 s 39; 1999 c 107 s 59; 2000 c 343 s 4; 2001 c 175 s 48,52; 1Sp2003 c 3 art 2 s 20*

## 268.194 UNEMPLOYMENT INSURANCE TRUST FUND.

**Subdivision 1. Establishment.** There is hereby established as a special state trust fund, separate and apart from all other public money or funds of this state, an

unemployment insurance trust fund, that shall be administered by the commissioner exclusively for the payment of unemployment benefits. This trust fund shall consist of:

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

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

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

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

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

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

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

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

Subd. 3a. [Renumbered subd 4]

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

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

Subd. 5. **Reed Act money.** (a) Money credited to the account of Minnesota in the federal unemployment trust fund pursuant to United States Code, title 42, section 1103, of the Social Security Act, also known as the Reed Act, may be requisitioned and used for (1) the payment of unemployment benefits, or (2) expenses incurred for the administration of the Minnesota unemployment insurance program 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 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 trust fund. The commissioner shall account for the use of this money in accordance with the standards established by the United States Secretary of Labor. If any money is not spent for the purpose for which it was appropriated, or, if it remains unspent at the end of the period specified by the law appropriating the money, it shall be returned for credit to Minnesota's account in the federal unemployment trust fund.

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

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

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

**History:** *Ex1936 c 2 s 3,11; 1937 c 306 s 8; 1937 c 452 s 1; 1939 c 443 s 2,9; 1941 c 554 s 2,10; 1943 c 650 s 8; 1945 c 376 s 2,10; 1947 c 432 s 8-10; 1949 c 605 s 2; 1953 c 97 s 3,4; 1957 c 883 s 2-5; 1961 c 517 s 1; 1965 c 45 s 45; 1969 c 9 s 64; 1969 c 310 s 1; 1969 c 567 s 3; 1971 c 942 s 13; 1975 c 302 s 1; 1979 c 181 s 16; 1Sp1982 c 1 s 4; 1983 c 216 art 1 s 87; 1983 c 372 s 8; 1985 c 248 s 70; 1Sp1985 c 13 s 300; 1986 c 444; 1989 c 209 art 2 s 1; 1994 c 488 s 8; 1996 c 417 s 31; 1997 c 66 s 79,80; 1998 c 265 s 33-35,40-42,45; 1999 c 107 s 60,66; 2000 c 343 s 4; 2001 c 175 s 52; 1Sp2003 c 3 art 2 s 20; 2004 c 206 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 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;

(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.

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, 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 trust 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.

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

**History:** *Ex1936 c 2 s 13; 1941 c 554 s 12; 1945 c 376 s 12; 1953 c 97 s 16; 1957 c 883 s 8-10; 1963 c 721 s 1; 1965 c 45 s 46; 1969 c 399 s 1; 1969 c 567 s 3; 1973 c 254 s 3; 1973 c 492 s 14; 1973 c 720 s 73 subd 1; 1974 c 497 s 1; 1975 c 302 s 2; 1Sp1982 c 1 s 33; 1983 c 216 art 1 s 87; 1986 c 444; 1987 c 362 s 25; 1987 c 385 s 27; 1989 c 209 art 2 s 1; 1994 c 488 s 8; 1996 c 417 s 31; 1997 c 7 art 1 s 106; 1997 c 66 s 79,80; 1998 c 265 s 43; 1999 c 107 s 61,66; 2000 c 343 s 4; 2001 c 175 s 52; 1Sp2003 c 3 art 2 s 20; 2004 c 206 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 Law, the commissioner shall be represented by the attorney general.

**History:** *(4337-37) Ex1936 c 2 s 17; 1941 c 554 s 16; 1989 c 209 art 2 s 1; 1996 c 417 s 31; 2001 c 175 s 52; 1Sp2003 c 3 art 2 s 20*

## **268.21 NONLIABILITY OF STATE.**

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

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

**History:** *(4337-38) Ex1936 c 2 s 18; 1941 c 554 s 17; 1989 c 209 art 2 s 1; 1994 c 488 s 8; 1996 c 417 s 31; 1997 c 66 s 77; 1998 c 265 s 44; 1999 c 107 s 63; 2000 c 343 s 4; 1Sp2003 c 3 art 2 s 20*

## **268.22 SAVING CLAUSE.**

The legislature reserves the right to amend or repeal all or any part of the Minnesota Unemployment Insurance 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:** *(4337-39) Ex1936 c 2 s 19; 1941 c 554 s 18; 1991 c 199 art 2 s 1; 1996 c 417 s 31; 2001 c 175 s 52; 1Sp2003 c 3 art 2 s 20*

## **268.23 SEVERABLE.**

In the event that the United States Department of Labor determines that any provision of the Minnesota Unemployment Insurance 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:** *(4337-40) Ex1936 c 2 s 20; 1941 c 554 s 19; 1949 c 605 s 14; 1965 c 45 s 47; 1991 c 199 art 2 s 1; 1996 c 417 s 30,31; 1999 c 107 s 64,66; 2000 c 343 s 4; 2001 c 175 s 52; 1Sp2003 c 3 art 2 s 20*

**268.231** [Repealed, 1996 c 417 s 32]

**268.24** [Repealed, 1987 c 385 s 50]

**268.25** [Repealed, 1998 c 265 s 46]



- 268.26** [Repealed, 2004 c 206 s 53]
- 268.29** [Renumbered 299A.72]
- 268.30** [Renumbered 116L.30]
- 268.31** [Repealed, 1994 c 632 art 4 s 84]
- 268.315** [Repealed, 1994 c 632 art 4 s 84]
- 268.32** [Repealed, 1994 c 632 art 4 s 84]
- 268.33** [Repealed, 1994 c 632 art 4 s 84]
- 268.34** [Repealed, 1994 c 632 art 4 s 84]
- 268.35** [Repealed, 1994 c 632 art 4 s 84]
- 268.36** [Repealed, 1994 c 632 art 4 s 84]
- 268.361** Subdivision 1. [Renumbered 116L.361, subdivision 1]
  - Subd. 2. [Renumbered 116L.361, subd 2]
  - Subd. 3. [Repealed, 2004 c 206 s 53]
  - Subd. 4. [Renumbered 116L.361, subd 3]
  - Subd. 4a. [Renumbered 116L.361, subd 4]
  - Subd. 5. [Renumbered 116L.361, subd 5]
  - Subd. 6. [Renumbered 116L.361, subd 6]
  - Subd. 7. [Renumbered 116L.361, subd 7]
- 268.362** [Renumbered 116L.362]
- 268.3625** [Renumbered 116L.3625]
- 268.363** [Renumbered 116L.363]
- 268.364** Subdivision 1. [Renumbered 116L.364, subdivision 1]
  - Subd. 2. [Renumbered 116L.364, subd 2]
  - Subd. 3. [Renumbered 116L.364, subd 3]
  - Subd. 4. [Renumbered 116L.364, subd 4]
  - Subd. 5. [Repealed by amendment, 1989 c 328 art 7 s 4]
  - Subd. 6. [Renumbered 116L.364, subd 5]
- 268.365** Subdivision 1. [Repealed, 1993 c 369 s 146]
  - Subd. 2. [Renumbered 116L.365, subdivision 1]
  - Subd. 3. [Renumbered 116L.365, subd 2]
  - Subd. 4. [Renumbered 116L.365, subd 3]
- 268.366** [Renumbered 116L.366]
- 268.3661** [Repealed, 2004 c 206 s 53]
- 268.367** [Repealed, 1996 c 339 s 10]
- 268.37** [Repealed, 1998 c 273 s 15]
- 268.371** [Repealed, 1998 c 273 s 15]
- 268.38** Subdivision 1. [Repealed, 1998 c 273 s 15]
  - Subd. 2. [Repealed, 1998 c 273 s 15]
  - Subd. 3. [Repealed, 1998 c 273 s 15]

- Subd. 4. [Repealed, 1998 c 273 s 15]
- Subd. 5. [Repealed, 1998 c 273 s 15]
- Subd. 6. [Repealed, 1998 c 273 s 15]
- Subd. 7. [Repealed, 1998 c 273 s 15]
- Subd. 8. [Repealed, 1998 c 273 s 15]
- Subd. 9. [Repealed, 1998 c 273 s 15]
- Subd. 10. [Deleted, 1995 c 233 art 2 s 56]
- Subd. 11. [Repealed, 1996 c 339 s 10]
- Subd. 12. [Repealed, 1998 c 273 s 15]
- Subd. 13. [Renumbered 119A.43, subd 11]
- 268.39** [Repealed, 1997 c 200 art 4 s 23]
- 268.40** [Expired]
- 268.41** [Expired]
- 268.42** [Expired]
- 268.43** [Expired]
- 268.52** [Renumbered 119A.374]
- 268.53** Subdivision 1. [Renumbered 119A.375, subdivision 1]
  - Subd. 1a. [Renumbered 119A.375, subd 2]
  - Subd. 2. [Renumbered 119A.375, subd 3]
  - Subd. 3. [Renumbered 119A.375, subd 4]
  - Subd. 4. [Renumbered 119A.375, subd 5]
  - Subd. 5. [Renumbered 119A.375, subd 6]
  - Subd. 6. [Renumbered 119A.375, subd 7]
  - Subd. 7. [Renumbered 119A.375, subd 8]
- 268.54** [Renumbered 119A.376]
- 268.55** [Repealed, 1998 c 273 s 15]
- 268.551** [Repealed, 2004 c 206 s 53]
- 268.552** [Repealed, 2004 c 206 s 53]
- 268.56** Subdivision 1. [Renumbered 116L.56, subdivision 1]
  - Subd. 2. [Repealed, 2004 c 206 s 53]
  - Subd. 3. [Renumbered 116L.56, subd 2]
  - Subd. 4. [Renumbered 116L.56, subd 3]
- 268.561** Subdivision 1. [Renumbered 116L.561, subdivision 1]
  - Subd. 2. [Renumbered 116L.561, subd 2]
  - Subd. 3. [Renumbered 116L.561, subd 3]
  - Subd. 4. [Renumbered 116L.561, subd 4]
  - Subd. 5. [Renumbered 116L.561, subd 5]
  - Subd. 6. [Renumbered 116L.561, subd 6]
  - Subd. 7. [Renumbered 116L.561, subd 7]
  - Subd. 8. [Renumbered 116L.561, subd 8]
  - Subd. 9. [Renumbered 116L.561, subd 9]
  - Subd. 10. [Repealed, 2004 c 206 s 53]
- 268.60** [Renumbered 116L.60]

**268.61** Subdivision 1. [Renumbered 116L.61, subdivision 1]

Subd. 2. [Repealed, 2004 c 206 s 53]

Subd. 3. [Renumbered 116L.61, subd 2]

Subd. 4. [Renumbered 116L.61, subd 3]

Subd. 5. [Renumbered 116L.61, subd 4]

Subd. 6. [Renumbered 116L.61, subd 5]

**268.62** [Renumbered 116L.62]

**268.63** [Renumbered 116L.63]

**268.64** [Renumbered 116L.64]

**268.65** [Repealed, 2004 c 206 s 53]

**268.66** [Renumbered 116L.66]

**268.665** Subdivision 1. [Renumbered 116L.665, subdivision 1]

Subd. 2. [Renumbered 116L.665, subd 2]

Subd. 3. [Renumbered 116L.665, subd 3]

Subd. 3a. [Renumbered 116L.665, subd 4]

Subd. 4. [Renumbered 116L.665, subd 5]

Subd. 5. [Renumbered 116L.665, subd 6]

Subd. 6. [Renumbered 116L.665, subd 7]

**268.666** Subdivision 1. [Renumbered 116L.666, subdivision 1]

Subd. 2. [Renumbered 116L.666, subd 2]

Subd. 3. [Renumbered 116L.666, subd 3]

Subd. 4. [Renumbered 116L.666, subd 4]

Subd. 5. [Repealed, 2004 c 206 s 53]

**268.671** [Repealed, 1Sp1985 c 14 art 9 s 78 subd 1]

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

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

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

**268.674** [Repealed, 1Sp1985 c 14 art 9 s 78 subd 2]

**268.675** [Repealed, 1Sp1985 c 14 art 9 s 78 subd 2]

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

**268.676** [Repealed, 1997 c 200 art 3 s 19]

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

**268.678** [Repealed, 1997 c 200 art 3 s 19]

**268.679** Subdivision 1. [Repealed, 1Sp1985 c 14 art 9 s 78 subd 2]

Subd. 2. [Repealed, 1Sp1985 c 14 art 9 s 78 subd 2]

Subd. 3. [Repealed, 1997 c 200 art 3 s 19]

**268.68** [Repealed, 1Sp1985 c 14 art 9 s 78 subd 2]

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

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

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

- 268.683** [Repealed, 1Sp1985 c 14 art 9 s 78 subd 2]
- 268.684** [Repealed, 1Sp1985 c 14 art 9 s 78 subd 2]
- 268.685** [Repealed, 1Sp1985 c 14 art 9 s 78 subd 1]
- 268.686** [Repealed, 1Sp1985 c 9 art 2 s 104; 1Sp1985 c 14 art 9 s 78 subd 2]
- 268.80** [Repealed, 1983 c 312 art 8 s 18; 1Sp1985 c 14 art 9 s 78 subd 1]
- 268.81** [Repealed, 1983 c 312 art 8 s 18; 1Sp1985 c 14 art 9 s 78 subd 1]
- 268.82** [Repealed, 1983 c 312 art 8 s 18; 1Sp1985 c 14 art 9 s 78 subd 1]
- 268.83** [Repealed, 1983 c 312 art 8 s 18; 1Sp1985 c 14 art 9 s 78 subd 1]
- 268.84** [Repealed, 1Sp1985 c 14 art 9 s 78 subd 1]
- 268.85** [Repealed, 2001 c 79 s 8]
- 268.86** Subdivision 1. [Repealed, 1987 c 403 art 3 s 98]
  - Subd. 2. [Renumbered 116L.86, subdivision 1]
  - Subd. 3. [Repealed, 1987 c 403 art 3 s 98]
  - Subd. 4. [Repealed, 1987 c 403 art 3 s 98]
  - Subd. 5. [Repealed, 1987 c 403 art 3 s 98]
  - Subd. 6. [Renumbered 116L.86, subd 2]
  - Subd. 7. [Repealed, 1989 c 282 art 5 s 133]
  - Subd. 8. [Repealed, 2001 c 79 s 8]
  - Subd. 9. [Repealed, 1990 c 568 art 4 s 85]
  - Subd. 10. [Renumbered 116L.86, subd 3]
- 268.871** Subdivision 1. [Renumbered 116L.871, subdivision 1]
  - Subd. 1a. [Renumbered 116L.871, subd 2]
  - Subd. 2. [Repealed, 2001 c 79 s 8]
  - Subd. 3. [Renumbered 116L.871, subd 3]
  - Subd. 4. [Repealed, 2001 c 79 s 8]
  - Subd. 5. [Repealed, 1999 c 159 s 154]
- 268.872** Subdivision 1. [Renumbered 116L.872, subdivision 1]
  - Subd. 2. [Renumbered 116L.872, subd 2]
  - Subd. 3. [Repealed, 1990 c 568 art 4 s 85]
- 268.88** [Renumbered 116L.88]
- 268.881** [Renumbered 116L.881]
- 268.89** [Repealed, 2004 c 206 s 53]
- 268.90** [Repealed, 2001 c 79 s 8]
- 268.91** Subdivision 1. [Renumbered 256H.01]
  - Subd. 2. [Renumbered 256H.02]
  - Subd. 3. [Renumbered 256H.03]
  - Subd. 3a. [Renumbered 256H.04]
  - Subd. 3b. [Renumbered 256H.05]
  - Subd. 3c. [Renumbered 256H.06]
  - Subd. 3d. [Renumbered 256H.07]
  - Subd. 3e. [Renumbered 256H.08]
  - Subd. 3f. [Renumbered 256H.09]
  - Subd. 4. [Renumbered 256H.10]

- Subd. 5. [Renumbered 256H.11]
- Subd. 6. [Renumbered 256H.12]
- Subd. 6a. [Renumbered 256H.13]
- Subd. 7. [Renumbered 256H.14]
- Subd. 8. [Renumbered 256H.15]
- Subd. 9. [Renumbered 256H.16]
- Subd. 10. [Renumbered 256H.17]
- Subd. 11. [Renumbered 256H.18]
- Subd. 12. [Renumbered 256H.19]
- 268.911** [Renumbered 256H.20]
- 268.912** [Renumbered 119A.50]
- 268.913** Subdivision 1. [Renumbered 119A.51, subdivision 1]
  - Subd. 2. [Renumbered 119A.51, subd 2]
  - Subd. 3. [Renumbered 119A.51, subd 3]
  - Subd. 4. [Renumbered 119A.51, subd 4]
  - Subd. 5. [Repealed, 1997 c 162 art 1 s 19]
  - Subd. 6. [Renumbered 119A.51, subd 5]
- 268.914** Subdivision 1. [Renumbered 119A.52]
  - Subd. 2. [Repealed, 1993 c 369 s 146]
- 268.915** [Renumbered 119A.53]
- 268.916** [Renumbered 119A.54]
- 268.9165** [Renumbered 119A.545]
- 268.917** [Repealed, 1998 c 273 s 15]
- 268.918** [Repealed, 2004 c 206 s 53]
- 268.92** [Repealed, 1998 c 273 s 15]
- 268.95** [Repealed, 2004 c 206 s 53]
- 268.96** [Renumbered 116L.96]
- 268.971** [Repealed, 2001 c 79 s 8]
- 268.975** [Repealed, 1Sp2001 c 4 art 2 s 41]
- 268.9755** [Repealed, 1995 c 131 s 3]
- 268.976** Subdivision 1. [Repealed, 2004 c 206 s 53]
  - Subd. 2. [Renumbered 116L.976, subdivision 1]
  - Subd. 3. [Renumbered 116L.976, subd 2]
- 268.977** [Repealed, 1993 c 369 s 146]
- 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]