

CHAPTER 268

UNEMPLOYMENT INSURANCE

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268.03 PUBLIC PURPOSE OF THE MINNESOTA UNEMPLOYMENT INSURANCE PROGRAM.

Subdivision 1. **Statement.** The public purpose of this chapter 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."

[For text of subd 2, see M.S.2004]

History: 2005 c 112 art 2 s 1

268.035 DEFINITIONS.

[For text of subds 1 to 8a, see M.S.2004]

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 or has filed business or self-employment income tax returns with the federal Internal Revenue Service based on that work or service in the previous year;
- (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.

[For text of subds 10 to 12b, see M.S.2004]

Subd. 13. **Employee.** "Employee" means:

- (1) every individual who is performing or has performed services for an employer in employment; or
- (2) each individual employed to perform or assist in performing the work of any agent or employee of the employer shall be considered to be an employee of 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. 14. **Employer.** "Employer" means any person which has had one or more employees during the current or the prior calendar year including any person that has elected, under section 268.042, to be subject to the Minnesota Unemployment Insurance Law and a joint venture composed of one or more employers.

An employee leasing company, professional employer organization, or similar person that has been assigned a tax or reimbursable account under section 268.046 is an employer for purposes of this chapter.

[For text of subds 15 to 19, see M.S.2004]

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 wages from 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 wages from 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:

(1) an individual or any type of organization or entity, resident or nonresident, for profit or nonprofit, religious, charitable or educational, including any receiver or trustee in a bankruptcy, successor of any of the foregoing, or legal representative of a deceased individual; and

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

[For text of subds 21a to 25a, see M.S.2004]

Subd. 26. **Unemployed.** An applicant shall be considered "unemployed" (1) in any week that the applicant performs less than 32 hours of service in employment, covered employment, noncovered employment, self-employment, or volunteer work; and (2) any earnings with respect to that week are less than the applicant's weekly unemployment benefit amount.

[For text of subds 26a to 32, see M.S.2004]

History: 2005 c 112 art 2 s 2-7

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 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).

[For text of subds 3 and 4, see M.S.2004]

History: 2005 c 112 art 2 s 8

268.043 DETERMINATIONS OF COVERAGE.

(a) The commissioner, upon the commissioner's own motion or upon application of a 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 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 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 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 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: 2005 c 112 art 2 s 9

268.0435 SINGLE MEMBER LIMITED LIABILITY COMPANIES.

If the only member of a limited liability company is a corporation, and the limited liability company is disregarded for purposes of filing federal corporate income tax, all the workers performing services for the limited liability company must be reported on the corporation's wage detail report under section 268.044. A corporation that violates this section shall be subject to the penalties under section 268.184, subdivision 1a. Penalties shall be credited to the administration account to be used to ensure integrity in the unemployment insurance program.

History: 2005 c 112 art 1 s 1

268.044 WAGE REPORTING.

Subdivision 1. Wage detail report. (a) Each employer that has employees in covered employment shall submit, under the account provided for in section 268.045 or 268.046, 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, if section 268.046, subdivision 1, paragraph (b), or subdivision 2, paragraph (b), applies, by separate unit. 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.

[For text of subd 1a, see M.S.2004]

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 twice each 12 months. The amount of the late fee assessed shall not be less than \$250.

(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. (a) Any employer that submits the wage detail report, but fails to include all employee information or enters erroneous information, shall be subject to an administrative service fee of \$25 for each employee for whom the information is partially missing or erroneous.

(b) Any employer that submits the wage detail report, but fails to include an employee, shall be subject to an administrative service penalty equal to two percent of the total wages for each employee for whom the information is completely missing.

(c) An administrative service fee or penalty under this subdivision shall be canceled if the commissioner determines that the failure or error by the employer occurred because of ignorance or inadvertence.

[For text of subd 4, see M.S.2004]

History: 2005 c 112 art 1 s 2,3; art 2 s 10

268.045 EMPLOYER TAX OR REIMBURSABLE ACCOUNTS.

Subdivision 1. **Account for each employer.** The commissioner shall maintain (1) a tax account for each taxpaying employer and (2) a reimbursable account for each nonprofit or government employer that has elected under section 268.052 or 268.053 to be liable for reimbursements, except as provided in section 268.046. The commissioner shall assess the tax account 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 for any unemployment benefits determined chargeable under section 268.047 and shall credit the reimbursable account with the payments made.

Subd. 2. [Repealed, 2005 c 112 art 1 s 16]

Subd. 3. [Repealed, 2005 c 112 art 1 s 16]

Subd. 4. [Repealed, 2005 c 112 art 1 s 16]

History: 2005 c 112 art 1 s 4

268.046 TAX AND REIMBURSABLE ACCOUNTS ASSIGNED TO EMPLOYEE LEASING COMPANIES, PROFESSIONAL EMPLOYER ORGANIZATIONS, OR SIMILAR PERSON.

Subdivision 1. **Tax accounts assigned.** (a) Any person that contracts with a taxpaying employer to have that person obtain the taxpaying employer's workforce and provide workers to the taxpaying employer for a fee shall, as of the effective date of the contract, be assigned for the duration of the contract the taxpaying employer's account under section 268.045. That tax account must be maintained by the person separate and distinct from every other tax account held by the person and identified in a manner prescribed by the commissioner. The tax account shall, for the duration of the contract, be considered that person's account for all purposes of this chapter. The workers obtained from the taxpaying employer and any other workers provided by that person to the taxpaying employer must, under section 268.044, be reported on the wage detail report under that tax account, and that person shall pay any taxes due at the tax rate computed for that account under section 268.051, subdivision 2.

(b) Any workers of the taxpaying employer who are not covered by the contract under paragraph (a) must be reported by the taxpaying employer as a separate unit on the wage detail report under the tax account assigned under paragraph (a). Taxes and any other amounts due on the wages reported by the taxpaying employer under this paragraph may be paid directly by the taxpaying employer.

(c) If the taxpaying employer that contracts with a person under paragraph (a) does not have a tax account at the time of the execution of the contract, an account must be registered for the taxpaying employer under section 268.042 and the new employer tax rate under section 268.051, subdivision 5, must be assigned. The tax account shall then be assigned to the person as provided for in paragraph (a).

(d) A person that contracts with a taxpaying employer under paragraph (a) must, within 30 calendar days of the execution or termination of a contract, notify the commissioner by electronic transmission, in a format prescribed by the commissioner, of that execution or termination. The taxpaying employer's name, the account number assigned, and any other information required by the commissioner must be provided by that person.

(e) Any contract subject to paragraph (a) must specifically inform the taxpaying employer of the assignment of the tax account under this section and the taxpaying employer's obligation under paragraph (b). If there is a termination of the contract, the tax account shall, as of the date of termination, immediately be assigned to the taxpaying employer.

Subd. 2. **Nonprofit and government reimbursable accounts assigned.** (a) Any person that contracts with a nonprofit or government employer that is a reimbursing employer to have that person obtain the nonprofit or government employer's workforce and provide workers to the nonprofit or government employer for a fee, shall, as of the effective date of the contract, be assigned for the duration of the contract the nonprofit

or government employer's account under section 268.045. That reimbursable account must be maintained by the person separate and distinct from every other account held by the person and identified in a manner prescribed by the commissioner. That reimbursable account shall, for the duration of the contract, be considered that person's account for all purposes of this chapter. The workers obtained from the nonprofit or government employer and any other workers provided by that person to the nonprofit or government employer must, under section 268.044, be reported on the wage detail report under that reimbursable account, and that person shall pay any reimbursements due.

(b) Any workers of the nonprofit or government employer who are not covered by the contract under paragraph (a) must be reported by the nonprofit or government employer as a separate unit on the wage detail report under the reimbursable account assigned under paragraph (a). Reimbursements and any other amounts due on the wages reported by the nonprofit or government employer under this paragraph may be paid directly by the nonprofit or government employer.

(c) If the nonprofit or government employer that contracts with a person under paragraph (a) does not have an account at the time of the execution of the contract, an account must be registered for the nonprofit or government employer under section 268.042. The reimbursable account shall then be assigned to the person as provided for in paragraph (a).

(d) A person that contracts with a nonprofit or government employer under paragraph (a) must, within 30 calendar days of the execution or termination of a contract, notify the commissioner of that execution or termination by electronic transmission, in a format prescribed by the commissioner. The nonprofit or government employer's name, the account number assigned, and any other information required by the commissioner must be provided by that person.

(e) Any contract subject to paragraph (a) must specifically inform the nonprofit or government employer of the assignment of the reimbursable account under this section and the nonprofit or government employer's obligation under paragraph (b). If there is a termination of the contract, the reimbursable account shall, as of the date of termination, immediately be assigned to the nonprofit or government employer.

Subd. 3. Penalties; application. (a) Any person that violates the requirements of this section and any taxpaying employer that violates subdivision 1, paragraph (b), or any nonprofit or government employer that violates subdivision 2, paragraph (b), shall be subject to the penalties under section 268.184, subdivision 1a. Penalties shall be credited to the administration account to be used to ensure integrity in the unemployment insurance program.

(b) Section 268.051, subdivision 4, does not apply to contracts under this section. This section shall not limit or prevent the application of section 268.051, subdivision 4, to any other transactions or acquisitions involving the taxpaying employer. This section shall not limit or prevent the application of section 268.051, subdivision 4a.

(c) An assignment of an account upon the execution of a contract under this section and a termination of a contract with the corresponding assignment of the account shall not be considered a separation from employment of any worker covered by the contract. Nothing under this subdivision shall cause the person to be liable for any amounts past due under this chapter from the taxpaying employer or the nonprofit or government employer.

(d) This section applies to, but is not limited to, persons registered under section 79.255, but does not apply to persons that obtain an exemption from registration under section 79.255, subdivision 9.

History: 2005 c 112 art 1 s 5

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 under subdivision 6, 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.

[For text of subds 1a to 3, see M.S.2004]

Subd. 4. Experience rating history transfer. (a) When:

(1) a taxpaying employer acquires all of the organization, trade or business, or workforce of another taxpaying employer; and

(2) there is 25 percent or more common ownership or there is substantially common management or control between the predecessor and successor, the experience rating history of the predecessor employer shall be transferred as of the date of acquisition to the successor employer.

(b) When:

(1) a taxpaying employer acquires a portion, but less than all, of the organization, trade or business, or workforce of another taxpaying employer; and

(2) there is 25 percent or more common ownership or there is substantially common management or control between the predecessor and successor, the successor employer shall acquire, as of the date of acquisition, the experience rating history attributable to the portion it acquired, and the predecessor employer shall retain the experience rating history attributable to the portion that it has retained. If the commissioner determines that sufficient information is not available to substantiate that a distinct severable portion was acquired and to assign the appropriate distinct severable portion of the experience rating history, the commissioner shall assign the successor employer that percentage of the predecessor employer's experience rating history equal to that percentage of the employment positions it has obtained, and the predecessor employer shall retain that percentage of the experience rating history equal to the percentage of the employment positions it has retained.

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

(d) Each successor employer that is subject to paragraph (a) or (b) must notify the commissioner of the acquisition by electronic transmission, in a format prescribed by the commissioner, within 30 calendar days of the date of acquisition. Any successor employer that fails to notify the commissioner is subject to the penalties under section 268.184, subdivision 1a, if the successor's experience rating was lower than the predecessor's experience rating at the time of the acquisition. Penalties shall be credited to the administration account to be used to ensure integrity in the unemployment insurance program.

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

(f) If there has been a transfer of an experience rating history 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.

(g) The commissioner, upon notification of an employer, or upon the commissioner's own motion if the employer fails to provide the required notification, shall determine if an employer is a successor within the meaning of this subdivision. The commissioner shall, after determining the issue of succession or nonsuccession, recompute the tax rate under subdivision 6 of all employers affected. The commissioner shall send the recomputed tax rate to all affected employers by mail or electronic transmission. Any affected employer may protest the recomputed tax rate in accordance with the procedures in subdivision 6, paragraph (c).

(h) The "experience rating history" for purposes of this subdivision and subdivision 4a means those factors set out in subdivision 3, paragraph (b), that make up an experience rating.

For purposes of this chapter, an "acquisition" means anything that results in the obtaining by the successor employer, in any way or manner, of the organization, trade or business, or workforce of the predecessor employer.

A "distinct severable portion" in paragraph (b) means a location or unit separately identifiable within the employer's wage detail report under section 268.044.

(i) Regardless of the ownership, management, or control requirements of paragraph (a), if there is an acquisition or merger of a publicly held corporation by or with another publicly held corporation the experience rating histories of the corporations shall be combined as of the date of acquisition or merger for the purpose of recomputing a tax rate.

Subd. 4a. Actions that avoid taxes. (a) If the commissioner determines that any action was done, in whole or in part, to avoid:

- (1) an experience rating history;
- (2) the transfer of an experience rating history; or
- (3) the assignment of a tax rate for new employers under subdivision 5, paragraph (a) or (b), the commissioner, to insure that the trust fund receives all the taxes that would have been received had the action not occurred, may, effective the date of the action, transfer all or part of an experience rating history and recompute the tax rate or assign the appropriate new employer tax rate.

(b) This subdivision shall apply to any action between persons regardless of whether there is any commonality of ownership, management, or control between the persons. The authority granted to the commissioner under this subdivision is in addition to any other authority granted to the commissioner.

[For text of subd 5, see M.S.2004]

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 or recomputation required under subdivision 4 or 4a, and shall be the rate at which taxes shall be paid. A recomputed tax rate under subdivision 4 or 4a shall be the rate applicable for the quarter that includes the date of acquisition and any quarter thereafter during the calendar year in which the acquisition occurred. 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, 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, and has no amounts past due under this chapter, 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.

[For text of subs 8 and 9, see M.S.2004]

History: 2005 c 112 art 1 s 6-9; art 2 s 11

268.052 PAYMENT TO TRUST FUND BY STATE AND POLITICAL SUBDIVISIONS.

[For text of subd 1, see M.S.2004]

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

(b) An election shall be for a minimum period of two calendar years following the effective date of the election and continue unless a notice terminating the election is filed not later than 30 calendar days before the beginning of the calendar year. The termination shall be effective at the beginning of the next calendar year. Upon election, the commissioner shall establish a reimbursable account for the state or political subdivision. A termination of election shall be allowed only if the state or political subdivision has, since the beginning of the experience rating period under section 268.051, subdivision 3, paid taxes 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 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.

[For text of subds 3 to 5, see M.S.2004]

History: 2005 c 112 art 2 s 12

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 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 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.

[For text of subds 2 to 5, see M.S.2004]

History: 2005 c 112 art 2 s 13

268.057 COLLECTION OF TAXES.

[For text of subds 1 to 6, see M.S.2004]

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 date that the payment was due, 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.

[For text of subd 10, see M.S.2004]

History: 2005 c 112 art 2 s 14

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

[For text of subd 1, see M.S.2004]

Subd. 2. Employee leasing company, professional employer organization, or similar person. (a) A person whose work force consists of 50 percent or more of workers provided by an employee leasing company, professional employer organization, or similar person for a fee, 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 company, professional employer organization, or similar person.

(b) This subdivision applies to, but is not limited to, persons registered under section 79.255, but does not apply to agreements with persons that obtain an exemption from registration under section 79.255, subdivision 9.

[For text of subd 3, see M.S.2004]

History: 2005 c 112 art 1 s 10

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 because of a quit or discharge;

(3) the applicant has met all of the ongoing 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; and

(5) the applicant is not ineligible for unemployment benefits under section 268.182 because of a false representation or concealment of facts.

[For text of subds 2 and 3, see M.S.2004]

History: 2005 c 112 art 2 s 15

268.07 BENEFIT ACCOUNT.

[For text of subds 1 to 3a, see M.S.2004]

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 (5).

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.

History: 2005 c 112 art 2 s 16

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 week for which unemployment benefits are requested is in the applicant's benefit year;

(3) the applicant was unemployed as defined in section 268.035, subdivision 26;

(4) 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 or serving as an election judge;

(5) 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

(6) 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 or an issue of disqualification required under section 268.101;
- (5) that the applicant is performing services 32 hours or more, in employment, covered employment, noncovered employment, volunteer work, 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) vacation pay paid upon temporary, indefinite, or seasonal separation. This clause shall not apply to vacation pay paid upon a permanent separation from employment;

(2) severance pay, bonus 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;

(3) 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.

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

(4) holiday pay.

(b) This subdivision 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:

(1) 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

(2) 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.

(c) 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.

[For text of subds 3a and 4, see M.S.2004]

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 direct service as a volunteer firefighter or volunteer ambulance service personnel. This exception to paragraphs (a) and (b) does not apply to on-call or standby pay provided to a volunteer firefighter or volunteer ambulance service personnel. No deduction shall be made for jury duty pay or for pay as an election judge.

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

(e) Deductible 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.

[For text of subds 6 and 7, see M.S.2004]

Subd. 8. **Services for school contractors.** (a) 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.

(b) Wage credits from an employer are not subject to subdivision 7 if:

(1) those wage credits were earned by an employee of a private employer performing work pursuant to a contract between the employer and an elementary or secondary school; and

(2) the employment was related to food services provided to the school by the employer.

[For text of subds 9 to 11, see M.S.2004]

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 Bureau of Citizenship and Immigration Services 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.

[For text of subds 13 to 13b, see M.S.2004]

Subd. 13c. Offers of suitable employment. (a) An applicant shall be ineligible for all unemployment benefits for eight calendar weeks 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 suitable 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.

(d) The period of ineligibility under this subdivision and section 268.095 shall begin the Sunday of the week the applicant failed to apply for, accept, or avoided suitable employment without good cause.

(e) This subdivision and section 268.095 shall apply to offers of suitable employment that occur prior to the effective date of the benefit account and that occur during the benefit year.

(f) This subdivision and section 268.095 shall only apply to offers of suitable employment that are considered covered employment under section 268.035, subdivision 12.

[For text of subds 14 to 16, see M.S.2004]

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; 2005 c 112 art 2 s 17-21,27,41; 2005 c 115 s 1

268.086 CONTINUED BIWEEKLY REQUEST FOR UNEMPLOYMENT BENEFITS ON AN ACTIVE BENEFIT ACCOUNT.

[For text of subd 1, see M.S.2004]

Subd. 2. Continued biweekly request for unemployment benefits defined. A continued biweekly request for unemployment benefits is a certification by an appli-

cant, 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 eligibility and 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 electronic transmission under subdivision 5;
- (2) by mail under subdivision 6; or
- (3) 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. [Repealed, 2005 c 112 art 2 s 42]

[For text of subds 5 to 9, see M.S.2004]

History: 2005 c 112 art 2 s 22,23

268.095 DISQUALIFICATION BECAUSE OF A QUIT OR DISCHARGE.

Subdivision 1. Quit. An applicant who quit employment shall be disqualified from all unemployment benefits according to subdivision 10 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 district 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.

[For text of subds 2 and 3, see M.S.2004]

Subd. 4. Discharge. An applicant who was discharged from employment by an employer shall be disqualified from all unemployment benefits according to subdivision 10 only if:

- (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.

[For text of subds 5 to 6a, see M.S.2004]

Subd. 7. Act or omissions after separation. An applicant shall not be disqualified from unemployment benefits under section 268.085, subdivision 13c, and 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. [Renumbered 268.085, subd 13c]

Subd. 10. Disqualification duration. (a) A disqualification from the payment of all unemployment benefits under subdivisions 1 and 4 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.

(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) Section 268.085, subdivision 13c, and this section shall apply to all covered employment, full time or part time, temporary or of limited duration, permanent or of indefinite duration, that occurred in Minnesota during the base period, the period between the end of the base period and the effective date of the benefit account, or the benefit year, except as provided for in subdivision 1, clause (5).

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

History: 2005 c 112 art 2 s 24-29

268.101 DETERMINATIONS ON ISSUES OF 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 shall report any offers of employment refused during the eight calendar weeks prior to the date of the application for unemployment benefits and the name of the employer that made the offer. An applicant's failure to report the name of an employer, or giving an incorrect reason for no longer working for an employer, or failing to disclose an offer of employment that was refused, shall be considered a violation of section 268.182, subdivision 2.

In an application, the applicant shall also 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 refused, 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 refused 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 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, or offers of employment refused, 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, or the applicant being ineligible for unemployment benefits under section 268.085, subdivision 13c. 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 any required 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, or loss of employment that was required to be provided by the applicant under this section, the commissioner shall determine any issue of disqualification on that loss 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.

[For text of subd 3, see M.S.2004]

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

[For text of subds 4 to 6, see M.S.2004]

History: 2005 c 112 art 2 s 30-32,41

268.103 APPEALS BY ELECTRONIC TRANSMISSION.

[For text of subd 1, see M.S.2004]

Subd. 2. **Applicant's appeal by mail.** (a) The commissioner must allow an applicant to file an appeal 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 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.

[For text of subd 4, see M.S.2004]

History: 2005 c 112 art 2 s 33

268.105 APPEALS.

Subdivision 1. **Evidentiary hearing by an unemployment law judge.** (a) Upon a timely appeal having been filed, the department shall send, by mail or electronic transmission, 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 on 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. When the credibility of an involved party or witness testifying in an evidentiary hearing has a significant effect on the outcome of a decision, the unemployment law judge must set out the reason for crediting or discrediting that testimony. The unemployment law judge's decision is final unless a request for reconsideration is filed pursuant to subdivision 2.

(d) Only employees of the department who are attorneys shall serve as unemployment law judges. The commissioner may transfer to another unemployment law judge any proceedings pending before an unemployment law judge.

Subd. 2. **Request for reconsideration.** (a) Any involved applicant, involved employer, or the commissioner may, within 30 calendar days of the sending of the unemployment law judge's decision under subdivision 1, file a request for reconsideration asking the unemployment law judge to reconsider that decision. Section 268.103 shall apply to

a request for reconsideration. If a request for reconsideration is timely filed, the unemployment law judge shall issue an order:

- (1) modifying the findings of fact and decision issued under subdivision 1;
 - (2) setting aside the findings of fact and decision issued under subdivision 1 and directing that an additional evidentiary hearing be conducted under subdivision 1; or
 - (3) affirming the findings of fact and decision issued under subdivision 1.
- (b) Upon a timely request for reconsideration having been filed, the department shall send a notice, by mail or electronic transmission, to all involved parties that a request for reconsideration has been filed. The notice shall inform the involved parties:
- (1) of the opportunity to provide comment on the request for reconsideration, and the right under subdivision 5 to obtain a copy of any recorded testimony and exhibits offered or received into evidence at the evidentiary hearing;
 - (2) that providing specific comments as to a perceived factual or legal error in the decision, or a perceived error in procedure during the evidentiary hearing, will assist the unemployment law judge in deciding the request for reconsideration;
 - (3) of the right to obtain any comments and submissions provided by the other involved party regarding the request for reconsideration; and
 - (4) of the provisions of paragraph (c) regarding additional evidence.

This paragraph shall not apply if paragraph (d) is applicable.

(c) In deciding a request for reconsideration, the unemployment law judge shall not, except for purposes of determining whether to order an additional evidentiary hearing, consider any evidence that was not submitted at the evidentiary hearing conducted under subdivision 1.

The unemployment law judge must order an additional evidentiary hearing if an involved party shows that evidence which was not submitted at the evidentiary hearing: (1) would likely change the outcome of the decision and there was good cause for not having previously submitted that evidence; or (2) would show that the evidence that was submitted at the evidentiary hearing was likely false and that the likely false evidence had an effect on the outcome of the decision.

(d) If the involved applicant or involved employer who filed the request for reconsideration failed to participate in the evidentiary hearing conducted under subdivision 1, an order setting aside the findings of fact and decision and directing that an additional evidentiary hearing be conducted must be issued if the party who failed to participate had good cause for failing to do so. In the notice of the request for reconsideration, the party who failed to participate shall be informed of the requirement, and provided the opportunity, to show good cause for failing to participate. If the unemployment law judge determines that good cause for failure to participate has not been shown, the unemployment law judge must state that in the order issued under paragraph (a).

Submission of a written statement at the evidentiary hearing under subdivision 1 shall not constitute participation for purposes of this paragraph.

All involved parties must be informed of this paragraph with the notice of appeal and notice of hearing provided for in subdivision 1.

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

(e) A request for reconsideration shall be decided by the unemployment law judge who issued the findings of fact and decision under subdivision 1 unless that unemployment law judge: (1) is no longer employed by the department; (2) is on an extended or indefinite leave; (3) has been disqualified from the proceedings on the judge's own motion; or (4) has been removed from the proceedings as provided for under subdivision 1 or applicable rule.

(f) The unemployment law judge shall send to any involved applicant or involved employer, by mail or electronic transmission, the order issued under this subdivision.

An order modifying the previously issued findings of fact and decision or an order affirming the previously issued findings of fact and decision shall be the final department decision on the matter and shall be final and binding on the involved applicant and involved employer unless judicial review is sought under subdivision 7.

Subd. 2a. [Repealed by amendment, 2005 c 112 art 2 s 34]

Subd. 3. **Withdrawal of appeal.** (a) Any appeal that is pending before an unemployment law 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 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 order allows unemployment benefits to an applicant, the unemployment benefits shall be paid regardless of any request for reconsideration or any appeal to the Minnesota Court of Appeals having been filed.

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

(c) If an unemployment law judge's order under subdivision 2 allows unemployment benefits to an applicant under section 268.095 because of a quit or discharge and the unemployment law judge's decision is reversed by the Minnesota Court of Appeals or the Supreme Court of Minnesota, any unemployment benefits paid the applicant shall not be considered an overpayment of those unemployment benefits under section 268.18, subdivision 1.

(d) If an unemployment law judge, pursuant to subdivision 2, orders the taking of additional evidence, the unemployment law judge's prior decision shall continue to be enforced until new findings of fact and decision are made by the unemployment law judge.

Subd. 4. **Testimonial powers.** An unemployment law 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, be furnished to a party at no cost during the time period for filing a request for reconsideration or while a request for reconsideration is pending.

(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 a request for reconsideration, or while a request for reconsideration is pending, that testimony and other evidence shall later be made available only pursuant to a district court order. A subpoena shall not be considered a district 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 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 or 2, an applicant or involved employer may be represented by any agent.

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

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

(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 Minnesota Court of Appeals may affirm the decision of the unemployment law judge or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision are:

- (1) in violation of constitutional provisions;
- (2) in excess of the statutory authority or jurisdiction of the department;
- (3) made upon unlawful procedure;
- (4) affected by other error of law;
- (5) unsupported by substantial evidence in view of the entire record as submitted;

or

- (6) arbitrary or capricious.

(e) The department shall be considered the primary responding party to any judicial action involving an unemployment law judge's decision. The department may be represented by an attorney who is an employee of the department.

History: 2005 c 112 art 2 s 34

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, 268.18, and 268.184 have priority over any amounts deducted under this section. Federal income tax withholding has priority over state income tax withholding.

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

[For text of subds 2 to 5, see M.S.2004]

History: 2005 c 112 art 2 s 35

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 date of a determination of overpayment issued under this subdivision shall not be considered 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 the penalty 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.

(e) Unemployment benefits paid for weeks more than four years prior to the date of a determination of overpayment by fraud issued under this subdivision shall not be considered overpaid unemployment benefits.

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.

(c) Interest payments under this section shall be credited to the administration account.

[For text of subs 3a to 6, see M.S.2004]

History: 2005 c 112 art 2 s 36-38

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

[For text of subd 1, see M.S.2004]

Subd. 2. **Administrative penalties.** Any applicant 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 being ineligible for unemployment benefits for 13 to 104 weeks. A determination of ineligibility setting out the weeks the applicant shall be ineligible shall be sent to the applicant 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: 2005 c 112 art 2 s 39

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, including reporting employees on a wage detail report under section 268.044 knowing the employees actually are employed by a different employer, 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 subdivision 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. 1a. Notification and misreporting penalties. (a) If the commissioner finds that any employer or agent of an employer failed to meet the notification requirements of section 268.051, subdivision 4, the employer shall be assessed a penalty of \$5,000 or two percent of the first full quarterly payroll acquired, whichever is higher. Payroll is wages paid as defined in section 268.035, subdivision 30. The penalty under this paragraph shall be canceled if the commissioner determines that the failure occurred because of ignorance or inadvertence.

(b) If the commissioner finds that any individual advised an employer to violate the employer's notification requirements under section 268.051, subdivision 4, the individual, and that individual's employer, shall each be assessed the penalty in paragraph (a).

(c) If the commissioner finds that any person or agent of a person violated the reporting requirements of section 268.0435 or 268.046, the person shall be assessed a penalty of \$5,000 or two percent of the quarterly payroll reported in violation of section 268.0435 or 268.046, whichever is higher. Payroll is wages paid as defined in section 268.035, subdivision 30.

(d) Penalties under this subdivision shall be in addition to any other penalties and subject to the same collection procedures that apply to past due amounts from an employer. Penalties must be paid within 30 calendar days after sending of the notice of penalty.

(e) The assessment of a penalty shall be final unless the person assessed files an appeal within 30 calendar days after sending of the notice of the penalty 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:

- (1) makes a false statement or representation knowing it to be false;
- (2) knowingly fails to disclose a material fact, including notification required under section 268.051, subdivision 4; or
- (3) knowingly advises or assists an employer in violating clause (1) or (2), 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: 2005 c 112 art 1 s 11-13

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 district court order or section 13.05. A subpoena shall not be considered a district 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 and state welfare agencies for the purpose of identifying employment, wages, and other information to assist in the collection of an overpayment debt in an assistance program;
- (10) 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;

(11) 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

(12) 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 district 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.

[For text of subds 1a and 2, see M.S.2004]

History: 2005 c 112 art 2 s 41; 1Sp2005 c 1 art 4 s 74