

**268.184 EMPLOYER MISCONDUCT; PENALTY.**

Subdivision 1. **Administrative penalties.** (a) The commissioner must penalize an employer if that employer or any employee, officer, or agent of that employer, is in collusion with any applicant for the purpose of assisting the applicant to receive unemployment benefits fraudulently. The penalty is \$500 or the amount of unemployment benefits determined to be overpaid, whichever is greater.

(b) The commissioner must penalize an employer if that employer or any employee, officer, or agent of that employer (1) made a false statement or representation knowing it to be false, (2) made a false statement or representation without a good faith belief as to correctness of the statement or representation, (3) knowingly failed to disclose a material fact, or (4) made an offer of employment to an applicant when, in fact, the employer had no employment available, but only if the employer's action:

(i) was taken to prevent or reduce the payment of unemployment benefits to any applicant;

(ii) was taken to reduce or avoid any payment required from an employer under this chapter or section 116L.20; or

(iii) caused an overpayment of unemployment benefits to an applicant.

The penalty is \$500, or 50 percent of the overpaid or reduced unemployment benefits or payment required, whichever is greater.

(c) The commissioner must penalize an employer if that employer failed or refused to honor a subpoena issued under section 268.105, subdivision 4, or section 268.188. The penalty is \$500 and any costs of enforcing the subpoena, including attorney fees.

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

(e) The determination of the penalty is final unless the employer files an appeal within 20 calendar days after the sending of the determination of the penalty to the employer by mail or electronic transmission. Proceedings on the appeal are 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 must 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 must 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, must 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 must 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 are 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 determination of penalty.

(e) The determination of a penalty is final unless the person assessed files an appeal within 20 calendar days after sending of the determination of the penalty by mail or electronic transmission. Proceedings on the appeal are 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:** *Ex1936 c 2 s 16; 1941 c 554 s 15; 1951 c 442 s 11; 1953 c 97 s 18; 1969 c 567 s 3; 1973 c 254 s 3; 1975 c 336 s 24; 1977 c 4 s 10; 1977 c 430 s 25 subd 1; 1979 c 181 s 17,18; 1Sp1982 c 1 s 37-40; 1983 c 216 art 1 s 42,87; 1983 c 372 s 45,46; 1985 c 248 s 70; 1Sp1985 c 14 art 9 s 75; 1986 c 444; 1987 c 385 s 40-45; 1988 c 712 s 3; 1989 c 209 art 2 s 1; 1990 c 566 s 8; 1992 c 484 s 15; 1994 c 483 s 1; 1995 c 54 s 21-24; 1996 c 417 s 29,31; 1997 c 66 s 76,79; 1998 c 265 s 38; 1999 c 107 s 56,66; 2000 c 343 s 4; 2001 c 175 s 47; 2004 c 183 s 83; 2005 c 112 art 1 s 11-13; 2007 c 128 art 2 s 16,17; 2009 c 78 art 4 s 50; 2010 c 347 art 2 s 21; 2011 c 84 art 2 s 8,9*