ARTICLE 10

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL; POLICY

Section 1. Minnesota Statutes 2018, section 268.035, subdivision 12, is amended to read:

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

(1) an employee's entire employment during the calendar quarter if:

(i) 50 percent or more of the employment during the quarter is performed primarily in Minnesota;

(ii) 50 percent or more of the employment during the quarter is not performed primarily in Minnesota or any other state, or Canada, but some of the employment is performed in Minnesota and the base of operations or place from which the employment is directed or controlled is in Minnesota; or

(iii) the employment during the quarter is not performed primarily in Minnesota or any other state and the base of operations or place from which the employment is directed or controlled is not in any state where part of the employment is performed, but the employee's residence is in Minnesota during 50 percent or more of the calendar quarter;

(b) an employee's entire employment during the calendar quarter performed within the United States or Canada, if:

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

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

(c) the employment during the calendar quarter is performed entirely outside the United States and Canada, by an employee who is a United States citizen in the employ of an American employer, if the employer's principal place of business in the United States is located in Minnesota. For the purposes of this clause, "American employer" for the purposes of this clause, means a corporation organized under the laws of any state; an individual who is a resident of the United States; or a partnership in which two-thirds or more of the partners are residents of the United States, or a trust, if all of the trustees are residents of the United States, or a trust, if all of the trustees are residents of the United States is defined under the Federal Unemployment Tax Act, United States Code title 26, chapter 23, section 3306, subsection (i)(3); and

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

Subd. 13. Noncovered employment. (a) "Noncovered employment" means the following:

(1) an employee's entire employment during the calendar quarter if:

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

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

(iii) the employment during the quarter is not performed primarily in Minnesota or any other state and the base of operations or place from which the employment is directed or controlled is not in any state where part of the employment is performed, but the employee's residence is in Minnesota during 50 percent or more of the calendar quarter;

(b) an employee's entire employment during the calendar quarter performed within the United States or Canada, if:

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

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

(c) the employment during the calendar quarter is performed entirely outside the United States and Canada, by an employee who is a United States citizen in the employ of an American employer, if the employer's principal place of business in the United States is located in Minnesota. For the purposes of this clause, "American employer" for the purposes of this clause, means a corporation organized under the laws of any state; an individual who is a resident of the United States; or a partnership in which two-thirds or more of the partners are residents of the United States, or a trust, if all of the trustees are residents of the United States, or a trust, if all of the trustees are residents of the United States is defined under the Federal Unemployment Tax Act, United States Code title 26, chapter 23, section 3306, subsection (i)(3); and

(d) all the employment during the calendar quarter is performed by an officer or member of the crew of an American vessel on or in connection with the vessel, if the operating on navigable waters within, or within and without, the United States, and the office from which the operations of the vessel operating on navigable waters within, or within and without, the United States are ordinarily and regularly supervised, managed, directed, and controlled is in Minnesota.
"Covered employment" includes covered agricultural employment under subdivision 11. For the purposes of section 268.095, "covered employment" includes employment covered under an unemployment insurance program:

1. of any other state; 

2. established by an act of Congress or the law of Canada.

(d) The percentage of employment performed under paragraph (a) is determined by the amount of hours worked.

(e) Covered employment does not include any employment defined as "noncovered employment" under subdivision 20.

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 covered under the federal Railroad Unemployment Insurance Act;

(5) employment for a church or convention or association of churches, or a nonprofit organization operated primarily for religious purposes that is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(6) employment for an elementary or secondary school with a curriculum that includes religious education that is operated by a church, a convention or association of churches, or a nonprofit organization that is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(7) employment for Minnesota or a political subdivision, or a nonprofit organization, 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;

(8) employment for Minnesota or a political subdivision, or a nonprofit organization, 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 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;

(9) employment for Minnesota or a political subdivision, or a nonprofit organization, of
an individual receiving work relief or work training as part of an unemployment work relief
or work training program financed in whole or in part by any federal agency or an agency
of a state or political subdivision thereof. This clause does not apply to programs that require
unemployment benefit coverage for the participants;

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

(11) employment as a member of the Minnesota National Guard or Air National Guard;

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

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

(14) employment for Minnesota that is a major policy-making or advisory position in
the unclassified service;

(15) employment for Minnesota in an unclassified position established under 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, if the wages paid in any calendar quarter in either the
current or prior 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
whose primary relation to the school, college, or university is as a student. This does not

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include an individual whose primary relation to the school, college, or university is as an employee who also takes courses;

(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 does not apply to employment in a program established for or on behalf of an employer or group of employers;

(22) employment of a foreign college or university student who works on a seasonal or temporary basis under the J-1 visa summer work travel program described in Code of Federal Regulations, title 22, section 62.32;

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

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

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

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

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

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

(29) employment of a corporate officer, if the officer directly or indirectly, including through a subsidiary or holding company, owns 25 percent or more of the employer corporation, and employment of a member of a limited liability company, if the member directly or indirectly, including through a subsidiary or holding company, owns 25 percent or more of the employer limited liability company;

(30) employment as a real estate salesperson, other than a corporate officer, if all the wages from the employment is solely by way of commission;

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

(33) 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;

(34) employment in "agricultural employment" unless it is "covered agricultural employment" under subdivision 11; or

(35) if employment during one-half or more of any pay period was covered employment, all the employment for the pay period is 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 is 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. 2a.

2015. An amount equal to an average high cost multiple of 1.0 is a federal measure of adequate reserves in relation to the state's current economy. The commissioner must calculate and publish, as soon as possible following December 31 of any calendar year, the trust fund balance on December 31 along with the amount an average high cost multiple of 1.0 equals.

The amount of tax reduction for any taxpaying employer is the same percentage of the total amount above 1.0 as the percentage of taxes paid by the employer during the calendar year is of the total amount of taxes that were paid by all nonmaximum experience rated employers during the year except taxes paid by employers assigned a tax rate equal to the maximum experience rating plus the applicable base tax rate.

(b) For purposes of this subdivision, "average high cost multiple" has the meaning given in Code of Federal Regulations, title 20, section 606.3, as amended through December 31, 2015. An amount equal to an average high cost multiple of 1.0 is a federal measure of adequate reserves in relation to the state's current economy. The commissioner must calculate and publish, as soon as possible following December 31 of any calendar year, the trust fund balance on December 31 along with the amount an average high cost multiple of 1.0 equals.

Actual wages paid must be used in the calculation and estimates may not be used.

(c) The unemployment tax reduction under this subdivision does not apply to employers that were assigned a tax rate equal to the maximum experience rating plus the applicable base tax rate for the year, nor to high experience rating industry employers under subdivision 5, paragraph (a). Computations under paragraph (a) are not subject to the rounding requirement of section 268.034. The refund provisions of section 268.057, subdivision 7, do not apply.

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The unemployment tax reduction under this subdivision applies to taxes paid between March 1 and December 15 of the year following the December 31 computation under paragraph (a).

The amount equal to the average high cost multiple of 1.0 on December 31, 2012, must be used for the calculation under paragraph (a) but only for the calculation made on December 31, 2013. Notwithstanding paragraph (d), the tax reduction resulting from the application of this paragraph applies to unemployment taxes paid between July 1, 2014, and June 30, 2015. If there was an experience rating history transfer under subdivision 4, the successor employer must receive that portion of the predecessor employer's tax reduction equal to that portion of the experience rating history transferred. The predecessor employer retains that portion of tax reduction not transferred to the successor. This paragraph applies to that portion of the tax reduction that remains unused at the time of notice of acquisition is provided under subdivision 4, paragraph (e).

If any amounts due from an employer under this chapter or section 116L.20, except late fees under section 268.044, are not received on or before March 1 and December 15 of the year following the December 31 computation under paragraph (a), the commissioner must assess interest on any amount that remains unpaid beginning 30 calendar days after the date of a determination of overpayment penalty. Interest is assessed at the rate of one percent per month or any part of a month.

A determination of overpayment is assessed in the same manner as on employer debt under section 268.057, subdivision 4 on unpaid interest. Interest collected under this subdivision is credited to the contingent account.

This section is effective October 1, 2020.
ARTICLE 12
UNEMPLOYMENT INSURANCE ADVISORY COUNCIL; BASE PERIODS

Section 1. Minnesota Statutes 2018, section 268.035, subdivision 4, is amended to read:

Subd. 4. **Base period.** (a) "Base period," unless otherwise provided in this subdivision, means the most recent four completed calendar quarters before the effective date of an applicant's application for unemployment benefits if the application has an effective date occurring after the month following the most recent completed calendar quarter. The base period under this paragraph is as follows:

1. If the application for unemployment benefits is effective on or between these dates:
   - February 1 - March 31: January 1 - December 31
   - May 1 - June 30: April 1 - March 31
   - August 1 - September 30: July 1 - June 30
   - November 1 - December 31: October 1 - September 30

2. If an application for unemployment benefits has an effective date that is during the month following the most recent completed calendar quarter, then the base period is the first four of the most recent five completed calendar quarters before the effective date of an applicant's application for unemployment benefits. The base period under this paragraph is as follows:
   - If the application for unemployment benefits is effective on or between these dates:
     - February 1 - March 31: January 1 - December 31
     - May 1 - June 30: April 1 - March 31
     - August 1 - September 30: July 1 - June 30
     - November 1 - December 31: October 1 - September 30

3. Regardless of paragraph (a), a base period of the first four of the most recent five completed calendar quarters must be used if the applicant would have more wage credits under that base period than under a base period of the four most recent completed calendar quarters.

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If the applicant under paragraph (b) has insufficient wage credits to establish a benefit account, then a base period of the most recent four completed calendar quarters before the effective date of the applicant’s application for unemployment benefits must be used.

If the applicant has insufficient wage credits to establish a benefit account under a base period of the four most recent completed calendar quarters, or a base period of the first four of the most recent five completed calendar quarters, but during either base period the applicant received workers’ compensation for temporary disability under chapter 176 or a similar federal law or similar law of another state, or if the applicant whose own serious illness caused a loss of work for which the applicant received compensation for loss of wages from some other source, the applicant may request a base period as follows:

1. (1) if an applicant was compensated for a loss of work of seven to 13 weeks, during a base period referred to in paragraph (a) or (b), then the base period is the first four of the most recent six completed calendar quarters before the effective date of the application for unemployment benefits;

2. (2) if an applicant was compensated for a loss of work of 14 to 26 weeks, during a base period referred to in paragraph (a) or (b), then the base period is the first four of the most recent seven completed calendar quarters before the effective date of the application for unemployment benefits;

3. (3) if an applicant was compensated for a loss of work of 27 to 39 weeks, during a base period referred to in paragraph (a) or (b), then the base period is the first four of the most recent eight completed calendar quarters before the effective date of the application for unemployment benefits; and

4. (4) if an applicant was compensated for a loss of work of 40 to 52 weeks, during a base period referred to in paragraph (a) or (b), then the base period is the first four of the most recent nine completed calendar quarters before the effective date of the application for unemployment benefits.

(e) No base period under this subdivision may include wage credits upon which a prior benefit account was established.
in the base period the commissioner must determine the weekly unemployment benefit amount available, if any, and the maximum amount of unemployment benefits available, if any. The determination, which is a document separate and distinct from a document titled a determination of eligibility or determination of ineligibility issued under section 268.101, must be titled determination of benefit account. A determination of benefit account must be sent to the applicant and all base period employers, by mail or electronic transmission.

(c) If a base period employer did not provide wage detail information for the applicant as required under section 268.044, or provided erroneous information, or wage detail is not yet due and the applicant is using a base period under section 268.035, subdivision 4, paragraph (d); and

(4) The applicant is using a base period under section 268.035, subdivision 4, paragraph (d) and

(2) Wage detail under section 268.044 is not yet required to be filed by the employer.

The commissioner may, at any time within 24 months from the establishment of a benefit account, reconsider any determination of benefit account and make an amended determination if the commissioner finds that the wage credits listed in the determination were incorrect for any reason. An amended determination of benefit account must be promptly sent to the applicant and all base period employers, by mail or electronic transmission. This subdivision does not apply to documents titled determinations of eligibility or determinations of ineligibility issued under section 268.101.

(f) (c) If an amended determination of benefit account reduces the weekly unemployment benefit amount or maximum amount of unemployment benefits available, any unemployment benefits that have been paid greater than the applicant was entitled to is an overpayment of unemployment benefits. A determination or amended determination issued under this section that results in an overpayment of unemployment benefits must set out the amount of the overpayment and the requirement under section 268.18, subdivision 1, that the overpaid unemployment benefits must be repaid.

Sec. 3. EFFECTIVE DATE.

Unless otherwise specified, this article is effective January 1, 2020.

ARTICLE 13

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL; HOUSEKEEPING

Section 1. Minnesota Statutes 2018, section 268.035, subdivision 15, is amended to read:
Subd. 15. **Employment.** (a) "Employment" means service performed by:

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

- an officer of a corporation;

- a member of a limited liability company who is an employee under the common law
  of employer-employee;

- an individual who is an employee under the Federal Insurance Contributions Act,
  United States Code, title 26, chapter 21, sections 3121 (d)(3)(A) and 3121 (d)(3)(D);

- product demonstrators in retail stores or other locations to aid in the sale of
  products. The person that pays the wages is the employer.

(b) Employment does not include service as a juror.

c) Construction industry employment is defined in subdivision 9a. Trucking and
messenger/courier industry employment is defined in subdivision 25b. Rules on determining
worker employment status are described under Minnesota Rules, chapter 3315.

Sec. 2. Minnesota Statutes 2018, section 268.044, subdivision 2, is amended to read:

- any employer that fails to submit
  the quarterly wage detail report when due must 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 is canceled 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 canceled more than twice each 12 months. The
increased late fee will be sent to the employer by mail or electronic transmission.

(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) doubles and a renewed demand notice and notice of the
increased late fee will be sent to the employer by mail or electronic transmission.

(c) Late fees due under this subdivision may be canceled, in whole or in part, under
section 268.066 where good cause for late submission is found by the commissioner 268.067.

Sec. 3. Minnesota Statutes 2018, section 268.047, subdivision 3, is amended to read:
Subd. 3. Exceptions for taxing employers. Unemployment benefits paid will not be used in computing the future tax rate of a taxing base period employer when:

(1) the applicant’s wage credits from that employer are less than $500;
(2) the applicant quit the employment, unless it was determined under section 268.095, to have been because of a good reason caused by the employer or because the employer notified the applicant of discharge within 30 calendar days. This exception applies only to unemployment benefits paid for periods after the applicant’s quitting the employment and, if the applicant is rehired by the employer, continues only until the beginning of the week the applicant is rehired; or
(3) the employer discharged the applicant from employment because of employment misconduct as determined under section 268.095. This exception applies only to unemployment benefits paid for periods after the applicant’s discharge from employment and, if the applicant is rehired by the employer, continues only until the beginning of the week the applicant is rehired.

This paragraph only applies if the payment is:

(a) An applicant is not eligible to receive unemployment benefits for any week the applicant is receiving, has received, or will receive vacation pay, sick pay, or personal time off pay, also known as "PTO."
(b) To payments from a vacation fund administered by a union or a third party not under the control of the employer.

Payments under this paragraph are applied to the period immediately following the later of the date of separation from employment or the date the applicant first notified the applicant of discharge within 30 calendar days. This exception applies only upon temporary, indefinite, or seasonal separation and does not apply:

(1) upon a permanent separation from employment; or
(2) to payments from a vacation fund administered by a union or a third party not under the control of the employer.

This paragraph only applies upon temporary, indefinite, or seasonal separation and does not apply:

(1) upon a permanent separation from employment; or
(2) to payments from a vacation fund administered by a union or a third party not under the control of the employer.

Payments under this paragraph are applied to the period immediately following the later of the date of separation from employment or the date the applicant first notified the applicant of discharge within 30 calendar days. This exception applies only upon temporary, indefinite, or seasonal separation and does not apply:

(1) considered wages under section 268.033, subdivision 29; or
(2) subject to the Federal Insurance Contributions Act (FICA) tax imposed to fund Social Security and Medicare.

(b) Payments under this paragraph subdivision are applied to the period immediately following the later of the date of separation from employment or the date the applicant first notified the applicant of discharge within 30 calendar days. This exception applies only upon temporary, indefinite, or seasonal separation and does not apply:

(1) considered wages under section 268.033, subdivision 29; or
(2) subject to the Federal Insurance Contributions Act (FICA) tax imposed to fund Social Security and Medicare.

(b) Payments under this paragraph subdivision are applied to the period immediately following the later of the date of separation from employment or the date the applicant first notified the applicant of discharge within 30 calendar days. This exception applies only upon temporary, indefinite, or seasonal separation and does not apply:

(1) considered wages under section 268.033, subdivision 29; or
(2) subject to the Federal Insurance Contributions Act (FICA) tax imposed to fund Social Security and Medicare.
becomes aware that the employer will be making a payment. The date the payment is actually
made or received, or that an applicant must agree to a release of claims, does not affect the
application of this paragraph subdivision.

(c) An applicant is not eligible to receive unemployment benefits for any week the
applicant is receiving, has received, will receive, or has applied for pension, retirement, or
annuity payments from any plan contributed to by a base period employer, including the
United States government. The base period employer is considered to have contributed to
the plan if the contribution is excluded from the definition of wages under section 268.035,
subdivision 28. If the pension, retirement, or annuity payment is paid in a lump sum, an
applicant is not considered to have received a payment if:

(1) if the payments are made periodically, the total of the payments to be received is
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 is divided by the applicant's last level of
regular weekly pay from the employer.

For purposes of this paragraph, The "last level of regular weekly pay" includes
commissions, bonuses, and overtime pay if that is part of the applicant's ongoing regular
compensation.

(d) Under this subdivision, if the payment with respect to a week is equal to or more
than the applicant's weekly unemployment benefit amount, the applicant is ineligible for
benefits for that week. If the payment with respect to a week is less than the applicant's
weekly unemployment benefit amount, unemployment benefits are reduced by the amount
of the payment.

Sec. 5. Minnesota Statutes 2018, section 268.085, subdivision 3a, is amended to read:

Subd. 3a. Workers' compensation and disability insurance offset. (a) An applicant
is not eligible to receive unemployment benefits for any week in which the applicant is
receiving or has received compensation for loss of wages equal to or in excess of the
applicant's weekly unemployment benefit amount under:
(1) the workers' compensation law of this state;  
(2) the workers' compensation law of any other state or similar federal law;  
(3) any insurance or trust fund paid in whole or in part by an employer.  

(b) This subdivision does not apply to an applicant who has a claim pending for loss of wages under paragraph (a), however, before unemployment benefits may be paid when a claim is pending, the issue of the applicant being available for suitable employment, as required under subdivision 1, clause (4), as must be determined under section 268.101, subdivision 2. If the applicant later receives compensation as a result of the pending claim, the applicant is subject to the provisions of paragraph (a) and the unemployment benefits paid are subject to recoupment by the commissioner to the extent that the compensation constitutes overpaid unemployment benefits under section 268.18, subdivision 1.  

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

Subd. 3b. Separation, severance, or bonus payments that delay unemployment benefits. (a) An applicant is not eligible to receive unemployment benefits for any week during which the applicant is receiving, has received, or will receive separation pay, severance pay, bonus pay, or any other payments paid by an employer because of, upon, or after separation from employment. This subdivision applies if the payment is:  

(1) considered wages under section 268.035, subdivision 29; or  
(2) subject to the Federal Insurance Contributions Act (FICA) tax imposed to fund Social Security and Medicare;  

(b) Payments under this subdivision are applied to the period immediately following the later of the date of separation from employment or the date the applicant first becomes aware that the employer will be making a payment. The date the payment is actually made or received, or that an applicant must agree to a release of claims, does not affect the application of this paragraph.  

(c) This subdivision does not apply to earnings under subdivision 5, back pay under subdivision 6, or vacation pay, sick pay, or personal time off pay under subdivision 3.  

(d) This subdivision applies to all the weeks of payment. The number of weeks of payment is determined in accordance with subdivision 1, paragraph (c).  

(e) Under this subdivision, if the payment with respect to a week is equal to or more than the applicant's weekly unemployment benefit amount, the applicant is ineligible for benefits for that week. If the payment with respect to a week is less than the applicant's weekly unemployment benefit amount, unemployment benefits requested for that week are reduced by the amount of that compensation payment.  

Subd. 4. Unemployment benefits not affected. (a) An applicant is not eligible to receive unemployment benefits for any week for which the applicant is subject to recoupment by the commissioner to the extent that the compensation constitutes overpaid unemployment benefits under section 268.18, subdivision 1.  

(b) This subdivision does not apply to an applicant who has a claim pending for loss of wages under paragraph (a), however, before unemployment benefits may be paid when a claim is pending, the issue of the applicant being available for suitable employment, as required under subdivision 1, clause (4), as must be determined under section 268.101, subdivision 2. If the applicant later receives compensation as a result of the pending claim, the applicant is subject to the provisions of paragraph (a) and the unemployment benefits paid are subject to recoupment by the commissioner to the extent that the compensation constitutes overpaid unemployment benefits under section 268.18, subdivision 1.  

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

Sec. 7. Minnesota Statutes 2018, section 268.085, is amended by adding a subdivision to read:

Subd. 3c. Pension or retirement payment offset. (a) An applicant is not eligible to receive unemployment benefits for any week the applicant is receiving, has received, will receive, or has applied for pension, retirement, or annuity payments from any plan contributed to by a base period employer including the United States government. The base period employer is considered to have contributed to the plan if the contribution is excluded from the definition of wages under section 268.035, subdivision 29.

(b) If the pension, retirement, or annuity payment is paid in a lump sum, an applicant is not considered to have received a payment if:

(1) the applicant immediately deposits that payment in a qualified pension plan or account; or

(2) that payment is an early distribution for which the applicant paid an early distribution penalty under the Internal Revenue Code, United States Code, title 26, section 72(t)(1).

(c) This subdivision does not apply to Social Security benefits under subdivision 4 or subdivision 13a.

(d) This subdivision applies to all the weeks of payment.

If the payment is made in a lump sum, that sum is divided by the applicant's last level of regular weekly pay from the employer to determine the weeks of payment.

The "last level of regular weekly pay" includes commissions, bonuses, and overtime pay if that is part of the applicant's ongoing regular compensation.

(e) Under this subdivision, if the payment with respect to a week is equal to or more than the applicant's weekly unemployment benefit amount, the applicant is ineligible for benefits for that week. If the payment with respect to a week is less than the applicant's weekly unemployment benefit amount, unemployment benefits are reduced by the amount of the payment.

Sec. 8. Minnesota Statutes 2018, section 268.085, subdivision 13a, is amended to read:

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

A leave of absence is voluntary when work that the applicant can then perform is available with the applicant's employer but the applicant chooses not to work. A medical leave of absence is not presumed to be voluntary.
A period of vacation requested by the applicant, paid or unpaid, is a voluntary leave of absence. A vacation period assigned by an employer under: (1) a uniform vacation shutdown; (2) a collective bargaining agreement; or (3) an established employer policy, is an involuntary leave of absence.

A leave of absence is a temporary stopping of work that has been approved by the employer. An involuntary leave of absence is not a quit and an involuntary leave of absence is not or a discharge from employment for purposes of Section 268.095 does not apply to a leave of absence.

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

(b) Regardless of paragraph (a), the following is not employment misconduct:

(1) conduct that was a consequence of the applicant's mental illness or impairment;

(2) conduct that was a consequence of the applicant's inefficiency or inadverdance;

(3) simple unsatisfactory conduct;

(4) conduct an average reasonable employee would have engaged in under the circumstances;

(5) conduct that was a consequence of the applicant's inability or incapacity;

(6) good faith errors in judgment if judgment was required;

(7) absence because of illness or injury of the applicant, with proper notice to the employer;

(8) absence, with proper notice to the employer, in order to provide necessary care because of the illness, injury, or disability of an immediate family member of the applicant;

(9) conduct that was a consequence of the applicant's chemical dependency, unless the applicant was previously diagnosed chemically dependent or had treatment for chemical dependency.

An applicant who is on a paid leave of absence, whether the leave of absence is voluntary or involuntary, is ineligible for unemployment benefits for the duration of the leave. A vacation period assigned by an employer under: (1) a uniform vacation shutdown; (2) a collective bargaining agreement; or (3) an established employer policy, is an involuntary leave of absence.

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

Sec. 9. Minnesota Statutes 2018, section 268.095, subdivision 6, is amended to read:

(a) Employment misconduct means any intentionally, negligently, or indifferent conduct, on the job or off the job, that displays clearly:

(1) a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee;

(2) a substantial lack of concern for the employment.

(b) Regardless of paragraph (a), the following is not employment misconduct:

(1) conduct that was a consequence of the applicant's mental illness or impairment;

(2) conduct that was a consequence of the applicant's inefficiency or inadverdance;

(3) simple unsatisfactory conduct;

(4) conduct an average reasonable employee would have engaged in under the circumstances;

(5) conduct that was a consequence of the applicant's inability or incapacity;

(6) good faith errors in judgment if judgment was required;

(7) absence because of illness or injury of the applicant, with proper notice to the employer;

(8) absence, with proper notice to the employer, in order to provide necessary care because of the illness, injury, or disability of an immediate family member of the applicant;

(9) conduct that was a consequence of the applicant's chemical dependency, unless the applicant was previously diagnosed chemically dependent or had treatment for chemical dependency.

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

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

Sec. 9. Minnesota Statutes 2018, section 268.095, subdivision 6, is amended to read:

(a) Employment misconduct means any intentionally, negligently, or indifferent conduct, on the job or off the job, that displays clearly:

(1) a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee;

(2) a substantial lack of concern for the employment.
dependency, and since that diagnosis or treatment has failed to make consistent efforts to
control the chemical dependency; or

(10) conduct that was a consequence of the applicant, or an immediate family member
of the applicant, being a victim of domestic abuse, sexual assault, or stalking. For the
purposes of this subdivision, "domestic abuse," "sexual assault," and "stalking" have the
meanings given them in subdivision 1.

c) Regardless of paragraph (b), clause (9), conduct in violation of sections 169A.20, 169A.31, 169A.50 to 169A.53, or 171.177 that
materially adversely affects the employment is employment misconduct.

d) If the conduct for which the applicant was discharged involved only a single incident,
that is an important fact that must be considered in deciding whether the conduct rises to
the level of employment misconduct under paragraph (a). This paragraph does not require
a specific acknowledgment or explanation that this paragraph was considered.

e) The definition of employment misconduct provided by this subdivision is exclusive
and no other definition applies.

Sec. 10. Minnesota Statutes 2018, section 268.095, subdivision 6a, is amended to read:

Subd. 6a. Aggravated employment misconduct defined. (a) For the purposes of this
section, "aggravated employment misconduct" means:

(4) The commission of any act, on the job or off the job, that would amount to a gross
misdemeanor or felony is aggravated employment misconduct if the act substantially
interfered with the employment or had a significant adverse effect on the employment;

A criminal charge or conviction is not necessary to determine aggravated employment
misconduct under this paragraph. If an applicant is convicted of a gross misdemeanor or
felony, the applicant is presumed to have committed the act.

(5) For an employee of a facility as defined in section 626.5572, aggravated
employment misconduct includes an act of patient or resident abuse, financial exploitation,
or recurring or serious neglect, as defined in section 626.5572 and applicable rules.

(6) If an applicant is convicted of a gross misdemeanor or felony for the same act for
which the applicant was discharged, it is aggravated employment misconduct if the act
substantially interfered with the employment or had a significant adverse effect on the
employment.

(c) The definition of aggravated employment misconduct provided by this subdivision
is exclusive and no other definition applies.

Sec. 11. EFFECTIVE DATE.
Unless otherwise specified, this article is effective October 1, 2019.

ARTICLE 14

Section 1. Minnesota Statutes 2018, section 268.044, subdivision 3, is amended to read:

Subd. 3. Missing or erroneous information. (a) Any employer that submits the wage detail report, but fails to include all required employee information or enters erroneous information, is 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, is subject to an administrative service fee equal to two percent of the total wages for each employee for whom the information is completely missing.

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

Sec. 2. Minnesota Statutes 2018, section 268.046, subdivision 1, is amended to read:

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 is, as of the effective date of the contract, 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 is, for the duration of the contract, considered that person's account for all purposes of this chapter. The workers obtained from the taxing employer and any other workers provided by that person to the taxpaying employer, including officers of the taxpaying employer as defined in section 268.035, subdivision 20, clause (29), whose wages paid by the person are considered paid in covered employment under sections 268.035, subdivision 24, for the duration of the contract between the taxpaying employer and the person, must, under section 268.044, be reported on the wage detail report under that tax account, and that person must pay any taxes due at the tax rate computed for that account under section 268.051, subdivision 2.

(b) Any workers of the taxing 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 taxing employer under this paragraph may be paid directly by the taxpaying employer.

(c) If the taxing 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 under section 268.045, subdivision 24, 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, and that person must pay any taxes due at the tax rate computed for that account because of ignorance or inadvertence.

Section 1. Minnesota Statutes 2018, section 268.044, subdivision 3, is amended to read:

Sub. 3. Missing or erroneous information. (a) Any employer that submits the wage detail report, but fails to include all required employee information or enters erroneous information, is 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, is subject to an administrative service fee equal to two percent of the total wages for each employee for whom the information is completely missing.

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

Sec. 2. Minnesota Statutes 2018, section 268.046, subdivision 1, is amended to read:

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 is, as of the effective date of the contract, 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 is, for the duration of the contract, considered that person's account for all purposes of this chapter. The workers obtained from the taxing employer and any other workers provided by that person to the taxpaying employer, including officers of the taxpaying employer as defined in section 268.035, subdivision 20, clause (29), whose wages paid by the person are considered paid in covered employment under sections 268.035, subdivision 24, for the duration of the contract between the taxpaying employer and the person, must, under section 268.044, be reported on the wage detail report under that tax account, and that person must 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 is then 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 is, as of the date of termination, immediately assigned to the taxpaying employer.

Sec. 3. Minnesota Statutes 2018, section 268.069, subdivision 1, is amended to read:

Subdivision 1. Requirements. The commissioner must 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 has not been held ineligible for unemployment benefits under section 268.095 because of a quit or discharge;

(3) the applicant has met all of the ongoing eligibility requirements under section 268.085;

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

(5) the applicant has not been held ineligible for unemployment benefits under section 268.183 because of a false representation or concealment of facts.

Sec. 4. Minnesota Statutes 2018, section 268.105, subdivision 6, is amended to read:

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

(b) An applicant may 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.

(c) No attorney fees may be awarded, or costs or disbursements assessed, against the department as a result of any proceedings under this section.

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 is then 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 is, as of the date of termination, immediately assigned to the taxpaying employer.

Sec. 3. Minnesota Statutes 2018, section 268.069, subdivision 1, is amended to read:

Subdivision 1. Requirements. The commissioner must 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 has not been held ineligible for unemployment benefits under section 268.095 because of a quit or discharge;

(3) the applicant has met all of the ongoing eligibility requirements under section 268.085;

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

(5) the applicant has not been held ineligible for unemployment benefits under section 268.183 because of a false representation or concealment of facts.

Sec. 4. Minnesota Statutes 2018, section 268.105, subdivision 6, is amended to read:

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

(b) An applicant may 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.

(c) No attorney fees may be awarded, or costs or disbursements assessed, against the department as a result of any proceedings under this section.
Sec. 5. Minnesota Statutes 2018, section 268.145, subdivision 1, is amended to read:

Sec. 5. Minnesota Statutes 2018, section 268.145, subdivision 1, is amended to read:

Subdivision 1. Notification. (a) Upon filing an application for unemployment benefits, the applicant must 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 must deduct ten percent for federal income tax. If an applicant also elects to have Minnesota state income tax withheld, the commissioner must make an additional five percent deduction for state income tax. Any amounts deducted or offset under sections 268.155, 268.18, and 268.184 have section 268.083 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 may not be retroactive and only applies to unemployment benefits paid after the election.

Sec. 6. Minnesota Statutes 2018, section 268.18, subdivision 5, is amended to read:

Sec. 6. Minnesota Statutes 2018, section 268.18, subdivision 5, is amended to read:

Subd. 5. Federal income tax withholding has 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 may not be retroactive and only applies to unemployment benefits paid after the election.

Sec. 7. REVISOR INSTRUCTION.

The revisor of statutes is instructed to make the following changes in Minnesota Statutes:

(1) delete the term "bona fide" wherever it appears in section 268.035;

(2) replace the term "under" with "subject to" in section 268.047, subdivision 2, clause (8);

(3) replace the term "displays clearly" with "shows" in chapter 268;

(4) replace the term "entire" with "hearing" in section 268.105; and
(5) replace "24 calendar months" with "eight calendar quarters" in section 268.052, subdivision 2.

Sec. 8. EFFECTIVE DATE.

Unless otherwise specified, this article is effective October 1, 2019.

ARTICLE 15

UI POLICY

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

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

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