

**Chapter:** 35

**Session:** 2017 Regular Session

**Topic:** Unemployment insurance, recommendations of the UI Advisory Council

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### Overview

This act contains the recommendations from the 2016 meetings of the Unemployment Insurance Advisory Council (UIAC).

#### Section

##### Article 1: UIAC Policy

- 1 **Penalties; application.** Employee leasing companies, essentially businesses that stand in as the “employer” for another entity, generally pay unemployment insurance taxes as the employer. Under current law, this general rule does not apply to businesses that receive a certain exemption under Minnesota Workers’ Compensation law as businesses that provide only temporary and supplemental workers. Under the bill, receiving that exemption no longer guarantees the general rule will not apply.
- 2 **Employee leasing company, professional employer organization, or similar person.** Under current law, businesses whose work force consists of 50 percent or more workers provided by an employee leasing company, or similar organization, are jointly liable for any unpaid unemployment insurance taxes. Similar to section 1 above, under current law, businesses that receive a certain exemption under Minnesota Workers’ Compensation law as businesses that provide only temporary and supplemental workers are not counted as employee leasing companies for the purposes of joint liability. Under the bill, receiving that exemption no longer guarantees an entity will not be considered an employee leasing company.
- 3 **Suspension from employment.** Clarifies when a suspension without pay is considered a discharge from employment for the purposes of eligibility for unemployment insurance benefits.

**Section**

- 4 Discharge defined.** Provides that a suspension without pay of more than 30 days or of indefinite duration is considered a discharge at the time the suspension began, for the purposes of eligibility for unemployment benefits.
- 5 Determination.** Provides that the unemployment insurance department may take up to 48 months to determine ineligibility for unemployment insurance benefits when the department has intervened in pending workers' compensation matters. Current law allows for 24 months, but contested workers' compensation disputes can take longer. When workers' compensation claims are pending, some workers can collect both unemployment insurance benefits and workers' compensation benefits at the same time. The unemployment insurance department is required to intervene in those cases to recoup any unemployment benefits paid when a worker was also receiving workers' compensation benefits representing lost wages.
- The section also makes stylistic changes.

**Article 2: UIAC Housekeeping**

- 1 Noncovered employment.** Clarifies that employment with a school affiliated with a church is not covered employment for the purposes of unemployment insurance. This means that the school does not pay unemployment insurance tax and the employees are not entitled to unemployment insurance benefits based on their employment with the school. This is already the law for employment with churches. These schools can, however, opt to be covered.
- 2 Staffing service.** Clarifies the definition of a staffing service for the purposes of the unemployment insurance statutes as a business that supplies workers to support or supplement the workforce of a client business. Special rules apply for interpreting whether an employee quit employment and would thus be ineligible for unemployment insurance benefits.
- 3 Assessments, fees, and surcharges; treatment.** Deletes the provision that any assessment, fee, or surcharge is considered a tax for unemployment insurance purposes. 2016 legislation created an unemployment insurance tax credit program, and under current law, late fees are considered "taxes" and are counted towards the credit.
- 4 Limitations on applications and benefits accounts.** Provides that an applicant for unemployment insurance benefits can withdraw a benefit account after a year. If the applicant received no unemployment benefits in that year, the application would not have to satisfy the requirement of having worked before opening a new benefit account, which is a prerequisite for applying for unemployment benefits. This change would likely only effect workers who received a severance equivalent to at least a year's pay and applied for benefits. Under current law they are ineligible for benefits if they are still unemployed and the severance has run out.
- 5 Eligibility conditions.** Incorporates expressly in statute the definition of "good cause" from a 2015 Minnesota Court of Appeals decision.
- 6 Leave of absence.** Clarifies the definition of "leave of absence."

**Section**

- 7 **Request for reconsideration.** Incorporates expressly in statute the definition of “good cause” from a 2016 Minnesota Court of Appeals decision.

**Article 3: UIAC Technical**

- 1 **Standard of proof.** Makes stylistic change.
- 2 **Employment.** Deletes unnecessary language and adds clarifying language.
- 3 **State’s average annual and average weekly wage.** Adds clarifying language and a cross reference.
- 4 **Wages paid.** Makes stylistic changes.
- 5 **Employer registration.** Makes stylistic changes.
- 6 **Payments.** Deletes unnecessary language.
- 7 **Benefit account requirements.** Deletes unnecessary language.
- 8 **Right of appeal.** Deletes unnecessary language.
- 9 **Receipt of back pay.** Deletes unnecessary language.
- 10 **School employees; between terms denial.** Makes clarifying and stylistic changes.
- 11 **Aliens.** Makes stylistic changes.
- 12 **Good cause defined.** Deletes unnecessary language.
- 13 **Quit.** Makes clarifying change.
- 14 **Quit defined.** Makes clarifying change.
- 15 **Combined wage arrangements for work in multiple states.** Makes clarifying and stylistic changes.
- 16 **Overpayment because of misrepresentation.** Replaces the term “fraud” with “misrepresentation.” Deletes one of two elements of civil fraud in the context of unemployment insurance. Makes stylistic changes.
- 17 **Interest.** Replaces the term “fraud” with “misrepresentation.”
- 18 **Remedies.** Makes stylistic changes.
- 19 **Fraud; criminal penalty.** Restructures and makes stylistic changes to the criminal fraud section of unemployment insurance statute.
- 20 **Misrepresentation and misreporting; administrative penalties.** Restructures and makes stylistic changes to the employer misconduct and misrepresentation section of unemployment insurance statute.
- 21 **Establishment.** Makes a clarifying change reflecting existing practice.
- 22 **Reimbursements.** Makes stylistic changes.

**Section**

- 23**      **Revisor’s instruction.** Instructs the revisor of statutes to delete the term “considered” in certain sections of statute.
- 24**      **Revisor’s instruction.** Instructs the revisor of statutes to change certain terms, renumber sections, and make cross reference changes.
- 25**      **Repealer.** Repeals session law language that was required by federal law and which has already been complied with.