

## CHAPTER 488—H.F.No. 3053

*An act relating to unemployment compensation; changing its name; modifying provisions relating to reporting requirements, eligibility conditions, and liability for benefits; amending Minnesota Statutes 1992, sections 268.03; 268.08, subdivision 1; and 268.10, subdivision 1; Minnesota Statutes 1993 Supplement, sections 268.08, subdivision 6; 268.09, subdivision 1; 268.10, subdivision 2; and 268.161, subdivision 9.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1992, section 268.03, is amended to read:

**268.03 DECLARATION OF PUBLIC POLICY.**

As a guide to the interpretation and application of sections 268.03 to 268.31, the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burdens. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this state will be promoted by providing, under the police powers of the state for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own. In recognition of its focus on returning the worker to gainful employment, this program will be known in Minnesota as "reemployment insurance."

Sec. 2. Minnesota Statutes 1992, section 268.08, subdivision 1, is amended to read:

Subdivision 1. **ELIGIBILITY CONDITIONS.** An individual shall be eligible to receive benefits with respect to any week of unemployment only if the commissioner finds that the individual:

(1) has registered for work at and thereafter has continued to report to an employment office, or agent of the office, in accordance with rules the commissioner may adopt; except that the commissioner may by rule waive or alter either or both of the requirements of this clause as to types of cases or situations with respect to which the commissioner finds that compliance with the requirements would be oppressive or would be inconsistent with the purposes of sections 268.03 to 268.231. The method of reporting allowed must not require an in-person appearance, and may incorporate appropriate new technology;

(2) has made a claim for benefits in accordance with rules as the commissioner may adopt;

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(3) was able to work and was available for work, and was actively seeking work. The individual's weekly benefit amount shall be reduced one-fifth for each day the individual is unable to work or is unavailable for work. Benefits shall not be denied by application of this clause to an individual who is in training with the approval of the commissioner, is a dislocated worker as defined in section 268.975, subdivision 3, who is in training approved by the commissioner, or in training approved pursuant to section 236 of the Trade Act of 1974, as amended.

An individual is deemed unavailable for work with respect to any week which occurs in a period when the individual is a full-time student in attendance at, or on vacation from an established school, college, or university unless a majority of the individual's wages paid during the 52 weeks preceding the claim date were for services performed during weeks in which the student was attending school as a full-time student.

An individual serving as a juror shall be considered as available for work and actively seeking work on each day the individual is on jury duty; ~~and~~

(4) has been unemployed for a waiting period of one week during which the individual is otherwise eligible for benefits under sections 268.03 to 268.231. ~~However, payment for the waiting week, not to exceed \$20, shall be made to the individual after the individual has qualified for and been paid benefits for four weeks of unemployment in a benefit year which period of unemployment is terminated because of the individual's return to employment. No individual is required to serve a waiting period of more than one week within the one-year period subsequent to filing a valid claim and commencing with the week within which the valid claim was filed; and~~

(5) has been participating in reemployment services, such as job search assistance services, if the individual has been determined to be likely to exhaust regular benefits and need reemployment services pursuant to a profiling system established by the commissioner, unless there is justifiable cause for the claimant's failure to participate.

Sec. 3. Minnesota Statutes 1993 Supplement, section 268.08, subdivision 6, is amended to read:

Subd. 6. **SERVICES PERFORMED FOR STATE, MUNICIPALITIES, OR CHARITABLE CORPORATION.** Benefits based on service in employment defined in section 268.04, subdivision 12, clauses (7), (8) and (9), are payable in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service subject to this chapter; except that

(a) Benefits based upon service performed in an instructional, research, or principal administrative capacity for an educational institution of higher education or a public school; or a nonpublic school; or the Minnesota state academy for the deaf or Minnesota state academy for the blind; or the Minnesota center for arts education; or in a public or nonpublic school for an educational cooper-

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~~ative service unit established under section 123.58, or any other educational service agency as defined in section 3304(a)(6)(A)(IV) of the Federal Unemployment Tax Act, shall not be paid for any week of unemployment commencing during the period between two successive academic years or terms, or during a similar period between two regular but not successive terms, or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if the individual performs the services in the first of the academic years or terms and if there is a contract or a reasonable assurance that the individual will perform services in any such capacity for any an educational institution of higher education, public school, nonpublic school, Minnesota state academies for the deaf and blind, the Minnesota center for arts education, an educational cooperative service unit, or other educational service agency, in the second of the academic years or terms;~~

(b) With respect to service performed in any capacity other than those capacities described in clause (a) of this subdivision, for an educational institution, benefits shall not be paid on the basis of these services to any individual for any week which commences during a period between two successive academic years or terms if the individual performs the services in the first of the academic years or terms and there is a reasonable assurance that the individual will perform the services in the second of the academic years or terms. If benefits are denied to any individual under this clause and the individual was not offered an opportunity to perform the services in the second of the academic years or term, the individual shall be entitled to a retroactive payment of benefits for each week in which the individual filed a timely claim for benefits, but the claim was denied solely because of this clause;

(c) With respect to services described in clause (a) or (b), benefits payable on the basis of the services shall not be paid to any individual for any week which commences during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before the vacation period or holiday recess, and there is a reasonable assurance that the individual will perform the services in the period immediately following the vacation period or holiday recess;

(d) With respect to services described in clause (a) or (b), benefits shall not be payable on the basis of services in any capacity specified in clauses (a), (b), and (c) to any individual who performed those services in an educational institution while in the employ of an educational service agency. For purposes of this clause, "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing services to one or more educational institutions; and

(e) With respect to services to state and local government, or nonprofit organizations covered by section 501(c)(3) of the Internal Revenue Code of 1986, as amended through December 31, 1992, if services are provided to or on behalf of an educational institution, benefits must be denied under the same circumstances as described in clauses (a) to (d).

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Sec. 4. Minnesota Statutes 1993 Supplement, section 268.09, subdivision 1, is amended to read:

Subdivision 1. **DISQUALIFYING CONDITIONS.** An individual separated from any employment under paragraph (a), (b), or (d) shall be disqualified for waiting week credit and benefits. For separations under paragraphs (a) and (b), the disqualification shall continue until four calendar weeks have elapsed following the individual's separation and the individual has earned eight times the individual's weekly benefit amount in insured work.

(a) **VOLUNTARY LEAVE.** The individual voluntarily and without good cause attributable to the employer discontinued employment with such employer. For the purpose of this paragraph, a separation from employment by reason of its temporary nature or for inability to pass a test or for inability to meet performance standards necessary for continuation of employment shall not be deemed voluntary.

A separation shall be for good cause attributable to the employer if it occurs as a consequence of sexual harassment. Sexual harassment means unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or other conduct or communication of a sexual nature when: (1) the employee's submission to such conduct or communication is made a term or condition of the employment, (2) the employee's submission to or rejection of such conduct or communication is the basis for decisions affecting employment, or (3) such conduct or communication has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment and the employer knows or should know of the existence of the harassment and fails to take timely and appropriate action.

(b) **DISCHARGE FOR MISCONDUCT.** The individual was discharged for misconduct, not amounting to gross misconduct connected with work or for misconduct which interferes with and adversely affects employment.

(c) **EXCEPTIONS TO DISQUALIFICATION.** An individual shall not be disqualified under paragraphs (a) and (b) under any of the following conditions:

(1) the individual voluntarily discontinued employment to accept employment offering substantially better conditions or substantially higher wages or both;

(2) the individual is separated from employment due to personal, serious illness provided that such individual has made reasonable efforts to retain employment.

An individual who is separated from employment due to the individual's illness of chemical dependency which has been professionally diagnosed or for which the individual has voluntarily submitted to treatment and who fails to make consistent efforts to maintain the treatment the individual knows or has been professionally advised is necessary to control that illness has not made reasonable efforts to retain employment.

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(3) the individual accepts work from a base period employer which involves a change in location of work so that said work would not have been deemed to be suitable work under the provisions of subdivision 2 and within a period of 13 weeks from the commencement of said work voluntarily discontinues employment due to reasons which would have caused the work to be unsuitable under the provision of said subdivision 2;

(4) the individual left employment because of reaching mandatory retirement age and was 65 years of age or older;

(5) the individual is terminated by the employer because the individual gave notice of intention to terminate employment within 30 days. This exception shall be effective only through the calendar week which includes the date of intended termination, provided that this exception shall not result in the payment of benefits for any week for which the individual receives the individual's normal wage or salary which is equal to or greater than the weekly benefit amount;

(6) the individual is separated from employment due to the completion of an apprenticeship program, or segment thereof, approved pursuant to chapter 178;

(7) the individual voluntarily leaves part-time employment with a base period employer while continuing full-time employment if the individual attempted to return to part-time employment after being separated from the full-time employment, and if substantially the same part-time employment with the base period employer was not available for the individual;

(8) the individual is separated from employment based solely on a provision in a collective bargaining agreement by which an individual has vested discretionary authority in another to act on behalf of the individual;

(9) except as provided in paragraph (d), separations from part-time employment will not be disqualifying when the claim is based on sufficient full-time employment to establish a valid claim from which the claimant has been separated for nondisqualifying reasons; or

(10) the individual accepts employment ~~during the benefit year~~ which represents a substantial departure from the individual's customary occupation and experience and would not be deemed suitable work as defined under subdivision 2, paragraphs (a) and (b), and within a period of 30 days from the commencement of that work voluntarily discontinues the employment due to reasons which would have caused the work to be unsuitable under the provisions of subdivision 2 or, if in commission sales, because of a failure to earn gross commissions averaging an amount equal to or in excess of the individual's weekly benefit amount. Other provisions notwithstanding, applying this provision precludes the use of these wage credits to clear a disqualification.

(d) **DISCHARGE FOR GROSS MISCONDUCT.** The individual was dis-

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charged for gross misconduct connected with work or gross misconduct which interferes with and adversely affects the individual's employment. For a separation under this clause, the commissioner shall impose a total disqualification for the benefit year and cancel all of the wage credits from the last employer from whom the individual was discharged for gross misconduct connected with work.

For the purpose of this paragraph "gross misconduct" is defined as misconduct involving assault and battery or the malicious destruction of property or arson or sabotage or embezzlement or any other act, including theft, the commission of which amounts to a felony or gross misdemeanor. For an employee of a health care facility, gross misconduct also includes misconduct involving an act of patient or resident abuse as defined in section 626.557, subdivision 2, clause (d).

If an individual is convicted of a felony or gross misdemeanor for the same act or acts of misconduct for which the individual was discharged, the misconduct is conclusively presumed to be gross misconduct if it was connected with the individual's work.

(e) **LIMITED OR NO CHARGE OF BENEFITS.** Benefits paid subsequent to an individual's separation under any of the foregoing paragraphs, excepting paragraphs (c)(3), (c)(5), and (c)(8), shall not be used as a factor in determining the future contribution rate of the employer from whose employment such individual separated.

Benefits paid subsequent to an individual's failure to accept an offer of suitable reemployment or to accept reemployment which offered substantially the same or better hourly wages and conditions of work as were previously provided by that employer, but was deemed unsuitable under subdivision 2, shall not be used as a factor in determining the future contribution rate of the employer whose offer of reemployment was not accepted or whose offer of reemployment was refused solely due to the distance of the available work from the individual's residence, the individual's own serious illness, the individual's other employment at the time of the offer, or if the individual is in training with the approval of the commissioner.

Benefits paid by another state as a result of Minnesota transferring wage credits under the federally required combined wage agreement shall not be directly charged to either the taxpaying or reimbursing employer.

(f) **ACTS OR OMISSIONS.** An individual who was employed by an employer shall not be disqualified for benefits under this subdivision for any acts or omissions occurring after separation from employment with the employer.

(g) **DISCIPLINARY SUSPENSIONS.** An individual shall be disqualified for waiting week credit and benefits for the duration of any disciplinary suspension of 30 days or less resulting from the individual's own misconduct. Disciplinary suspensions of more than 30 days shall constitute a discharge from employment.

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Sec. 5. Minnesota Statutes 1992, section 268.10, subdivision 1, is amended to read:

Subdivision 1. **FILING.** (a) Claims for benefits shall be made in accordance with such rules as the commissioner may prescribe. Each employer shall post and maintain printed statements of such rules in places readily accessible to individuals in the employer's service and shall make available to each such individual at the time of becoming unemployed, a printed statement of such rules. Such printed statements shall be supplied by the commissioner to each employer without cost to the employer.

(b) ~~Any employer upon separation of an employee from employment for any reason which may result in disqualification for benefits under section 268.09, shall furnish to such employee a separation notice which shall provide the employer's name, address, and employer account number as registered with the department, the employee's name and social security account number, the inclusive dates of employment, and the reason for the separation. A copy of such separation notice shall be filed with the commissioner within seven days of such separation.~~ The commissioner shall require each individual filing a new or reopened claim for benefits ~~to establish a benefit year~~ to furnish the reason for separation from all employers in the individual's base period and the most recent employer.

(c) For the purpose of complying with section 268.04, subdivision 2, the commissioner may require all base period employers to provide such information as the commissioner may prescribe, including, but not limited to, wages paid during any part of the base period, whether or not such information was previously provided.

(d) Upon establishment of a benefit year, the commissioner shall give notice to the last employer for whom the individual worked and all base period employers and registered successors to those employers as defined in section 268.06, subdivision 22. The employer so notified shall have seven days after the mailing of the notice to file a protest to monetary entitlement or a protest raising an issue of ineligibility or disqualification.

(e) If, upon review of the wage information on file with the department, it is found that an employer failed to provide wage information for the claimant, the commissioner shall accept a claimant certification as to the wage credits earned, based upon the claimant's records, and issue a monetary determination of validity certification. This determination may be modified based upon corrected information subsequently received from the employer or other sources. The employer who failed to report the individual's wages or filed an erroneous report may be penalized in accordance with section 268.16 or 268.18. In the absence of fraud, if a redetermination of validity of claim based on an employer's late corrected or erroneous report subsequently cancels or reduces the amount of benefits to which a claimant was entitled under the initial determination, the claimant shall not be required to make repayment to the fund of any benefits paid prior to such redetermination; ~~and.~~

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(f) The commissioner shall determine any issue raised under paragraph (d) or by an employer's late report. ~~If an employer fails to file a separation notice within the time limits prescribed in paragraph (b);~~ Any relief from benefit charges provided by section 268.09, subdivision 1, paragraph (e), shall apply to weeks of unemployment beginning after the filing of the late report or protest.

Sec. 6. Minnesota Statutes 1993 Supplement, section 268.10, subdivision 2, is amended to read:

Subd. 2. **EXAMINATION OF CLAIMS; DETERMINATION; APPEAL.**

(1) An official, designated by the commissioner, shall promptly examine each claim for benefits filed to establish a benefit year pursuant to this section, and, on the basis of the facts found, shall determine whether or not such claims are valid, and if valid, the weekly benefit amount payable, the maximum benefit amount payable during the benefit year, and the date the benefit year terminates, and this determination shall be known as the determination of validity. Notice of the determination of validity or any redetermination as provided for in clause (4) shall be promptly given the claimant and all other interested parties. If within the time specified for the filing of a protest as provided in subdivision 1, the employer makes an allegation of disqualification or raises an issue of the chargeability to the employer's account of benefits that may be paid on such claim, if the claim is valid, the issue thereby raised shall be promptly determined by said official and a notification of the determination delivered or mailed to the claimant and the employer. If an initial determination or a referee's decision or the commissioner's decision awards benefits, the benefits shall be paid promptly regardless of the pendency of any appeal period or any appeal or other proceeding which may thereafter be taken. Except as provided in clause (6), if a referee's decision modifies or reverses an initial determination awarding benefits, or if a commissioner's decision modifies or reverses an appeal decision awarding benefits, any benefits paid under the award of such initial determination or referee's decision shall be deemed erroneous payments.

(2) At any time within 24 months from the date of the filing of a valid claim for benefits by an individual, an official of the department or any interested party or parties raises an issue of claimant's eligibility for benefits for any week or weeks in accordance with the requirements of the provisions of sections 268.03 to 268.231 or any official of the department or any interested party or parties or benefit year employer raises an issue of disqualification in accordance with the rules of the commissioner, a determination shall be made thereon and a written notice thereof shall be given to the claimant and such other interested party or parties or benefit year employer. A determination issued under this clause which denies benefits for weeks for which the claimant has previously been paid benefits is an overpayment of those benefits subject to section 268.18.

(3) A determination issued pursuant to clauses (1) and (2) shall be final unless an appeal therefrom is filed by a claimant or employer within 15 days after the mailing of the notice of the determination to the last known address or personal delivery of the notice. Every notice of determination shall contain a

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prominent statement indicating in clear language the method of appealing the determination, the time within which such an appeal must be made, and the consequences of not appealing the determination. A timely appeal from a determination of validity in which the issue is whether an employing unit is an employer within the meaning of this chapter or whether services performed for an employer constitute employment within the meaning of this chapter shall be subject to the provisions of section 268.12, subdivision 13.

(4) At any time within 24 months from the date of the filing of a valid claim for benefits by an individual, the commissioner on the commissioner's own motion may reconsider a determination of validity made thereon and make a redetermination thereof on finding that an error in computation or identity or the crediting of wage credits has occurred in connection therewith or if the determination was made as a result of a nondisclosure or misrepresentation of a material fact. A determination or redetermination issued under this clause which denies benefits for weeks for which the claimant has previously been paid benefits is an overpayment of those benefits subject to section 268.18.

(5) However, the commissioner may refer any disputed claims directly to a referee for hearing and determination in accordance with the procedure outlined in subdivision 3 and the effect and status of such determination in such a case shall be the same as though the matter had been determined upon an appeal to the tribunal from an initial determination.

(6) If a referee's decision affirms an initial determination awarding benefits or the commissioner affirms a referee's decision awarding benefits, the decision, if finally reversed, shall result in a disqualification only for weeks following the week in which the ~~commissioner's decision, or the court's decision;~~ reversing the award of benefits was issued and benefits paid for that week and previous weeks shall neither be deemed overpaid nor shall they be considered in determining any individual employer's future contribution rate under section 268.06.

Sec. 7. Minnesota Statutes 1993 Supplement, section 268.161, subdivision 9, is amended to read:

Subd. 9. **PERSONAL LIABILITY.** Any officer, director, or employee of a corporation or any manager, governor, member, or employee of a limited liability company which is an employer under sections 268.03 to 268.231, ~~and any manager, governor, or member of a limited liability company having 20 percent ownership interest of a limited liability company which is an employer under sections 268.03 to 268.231,~~ who

(1) either individually or jointly with others, have or should have had control of, supervision over, or responsibility for the filing of the tax reports or the making of payments under this chapter, and

(2) willfully fails to file the reports or to make payments as required, shall be personally liable for contributions or reimbursement, including interest, penalties, and costs in the event the corporation does not pay to the department those amounts for which the employer is liable.

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For purposes of this subdivision, "willfulness" means that the facts demonstrate that the responsible party used or allowed the use of corporate or company assets to pay other creditors knowing that the payments required under this chapter were unpaid. An evil motive or intent to defraud is not necessary to satisfy the willfulness requirement. Any personal representative of the estate of a decedent or fiduciary who voluntarily distributes the assets filed therein without reserving a sufficient amount to pay the contributions, interest, and penalties due pursuant to this chapter shall be personally liable for the deficiency.

The personal liability of any person as provided herein shall survive dissolution, reorganization, receivership, or assignment for the benefit of creditors. For the purposes of this subdivision, all wages paid by the corporation shall be considered earned from the person determined to be personally liable.

An official designated by the commissioner shall make an initial determination as to the personal liability under this section. The determination shall be final unless the person found to be personally liable shall within 30 days after mailing of notice of determination to the person's last known address file a written appeal. Proceedings on the appeal shall be conducted in the same manner as an appeal of an employer's contribution rate or benefits charged to an employer's account under section 268.06, subdivision 20.

#### Sec. 8. REVISOR INSTRUCTION.

In the next edition of Minnesota Statutes and Minnesota Rules the revisor of statutes shall substitute the term "reemployment insurance" for "unemployment compensation" or "unemployment compensation insurance" where it occurs and does not refer to federal unemployment compensation.

Presented to the governor April 20, 1994

Signed by the governor April 22, 1994, 1:47 p.m.

### CHAPTER 489—H.F.No. 2433

*An act relating to the city of Duluth; authorizing the issuance of general obligation bonds to finance improvements to the Duluth entertainment convention center.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

#### Section 1. DULUTH; BONDS; IMPROVEMENTS TO THE DULUTH ENTERTAINMENT CONVENTION CENTER.

The Duluth city council may issue general obligation bonds, in one or more series, in an aggregate principal amount not to exceed \$4,000,000 to finance improvements to the Duluth entertainment convention center. The issuance of the bonds is subject to Minnesota Statutes, chapter 475, except that no election is required to authorize issuance of the bonds.

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