

SENATE
STATE OF MINNESOTA
EIGHTY-EIGHTH LEGISLATURE

S.F. No. 924

(SENATE AUTHORS: SPARKS and Tomassoni)

| DATE | D-PG | OFFICIAL STATUS |
|------------|------|---|
| 02/28/2013 | 457 | Introduction and first reading Referred to Jobs, Agriculture and Rural Development |
| 03/20/2013 | | Comm report: To pass as amended Second reading |

A bill for an act

1.1 relating to unemployment insurance; making federal conformity, policy, and
1.2 housekeeping changes; amending Minnesota Statutes 2012, sections 116L.17,
1.3 subdivision 4, by adding a subdivision; 268.033; 268.035, subdivisions 2, 4,
1.4 11, 12, 15, 22, 29; 268.042, subdivision 1; 268.043; 268.051, subdivisions 4a,
1.5 5; 268.057, subdivisions 5, 7; 268.0625, subdivision 4; 268.069, subdivision
1.6 3; 268.07, subdivisions 1, 3b; 268.085, subdivisions 3, 4, 5, 6; 268.0865,
1.7 subdivisions 3, 4; 268.095, subdivisions 2, 3; 268.103, subdivision 2a;
1.8 268.105; 268.131, subdivision 1; 268.136, subdivisions 1, 2, 3, 4, 5, by adding
1.9 subdivisions; 268.18, subdivisions 1, 2b; 268.184, subdivision 1a; 268.186;
1.10 268.192, subdivision 1a; 268.194, subdivision 1; 268.196, subdivision 1;
1.11 268.215; 268.23; Laws 2012, chapter 201, article 1, section 3; proposing coding
1.12 for new law in Minnesota Statutes, chapter 268; repealing Minnesota Rules, parts
1.13 3310.2905, subpart 2; 3310.2910; 3310.2914, subpart 1; 3310.2916; 3310.2919;
1.14 3310.2920; 3315.0200, subpart 1; 3315.0203; 3315.0211; 3315.0212; 3315.0213;
1.15 3315.0501, subparts 1, 2; 3315.0555, subpart 1; 3315.0801; 3315.0805;
1.16 3315.0810; 3315.0815; 3315.0820; 3315.0825; 3315.0830; 3315.0835;
1.17 3315.0840; 3315.0845; 3315.0901; 3315.0905; 3315.1001; 3315.1010.

1.18
1.19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

ARTICLE 1

FEDERAL CONFORMITY

1.22 Section 1. Minnesota Statutes 2012, section 268.136, subdivision 1, is amended to read:

1.23 Subdivision 1. **Shared work agreement plan requirements.** (a) An employer
1.24 may submit a proposed shared work plan for an employee group to the commissioner
1.25 for approval in a manner and format set by the commissioner. The proposed agreement
1.26 shared work plan must include:

1.27 (1) a certified statement that the normal weekly hours of work of all of the proposed
1.28 participating employees were full time or regular part time but are now reduced, or will be
1.29 reduced, with a corresponding reduction in pay, in order to prevent layoffs;

- 2.1 (2) the name and Social Security number of each participating employee;
- 2.2 (3) the number of layoffs that would have occurred absent the employer's ability to
- 2.3 participate in a shared work plan;
- 2.4 (4) a certified statement ~~of when~~ that each participating employee was first hired by
- 2.5 the employer, ~~which must be~~ at least one year before the proposed ~~agreement~~ shared work
- 2.6 plan is submitted and is not a seasonal, temporary, or intermittent worker;
- 2.7 ~~(4)~~ (5) the hours of work each participating employee will work each week for the
- 2.8 duration of the ~~agreement~~ shared work plan, which must be at least ~~20~~ one-half the normal
- 2.9 weekly hours and but no more than 32 hours per week, except that the ~~agreement~~ plan
- 2.10 may provide for a uniform vacation shutdown of up to two weeks;
- 2.11 (6) a certified statement that any health benefits and any pension benefits provided
- 2.12 by the employer to participating employees will continue to be provided under the same
- 2.13 terms and conditions as though the participating employees' hours of work each week had
- 2.14 not been reduced;
- 2.15 (7) a certified statement that the terms and implementation of the shared work plan is
- 2.16 consistent with the employer's obligations under state and federal law;
- 2.17 (8) an acknowledgement that the employer understands that unemployment benefits
- 2.18 paid under a shared work plan will be used in computing the future tax rate of a taxpaying
- 2.19 employer or charged to the reimbursable account of a nonprofit or government employer;
- 2.20 ~~(5)~~ (9) the proposed duration of the ~~agreement~~ shared work plan, which must be
- 2.21 at least two months and not more than one year, although ~~an agreement~~ a plan may be
- 2.22 extended for up to an additional year upon approval of the commissioner;
- 2.23 ~~(6)~~ (10) a starting date beginning on a Sunday at least 15 calendar days after the date
- 2.24 the proposed ~~agreement~~ shared work plan is submitted; and
- 2.25 ~~(7)~~ (11) a signature of an owner or officer of the employer who is listed as an owner
- 2.26 or officer on the employer's account under section 268.045.
- 2.27 ~~(b) An agreement may not be approved for an employer that:~~
- 2.28 (1) ~~has any unemployment tax or reimbursements, including any interest, fees,~~
- 2.29 ~~or penalties, due but unpaid; or~~
- 2.30 (2) ~~has the maximum experience rating provided for under section 268.051,~~
- 2.31 ~~subdivision 3.~~

2.32 Sec. 2. Minnesota Statutes 2012, section 268.136, subdivision 2, is amended to read:

2.33 Subd. 2. **Agreement Approval by commissioner.** (a) The commissioner must

2.34 promptly review a proposed agreement shared work plan and notify the employer, by mail

2.35 or electronic transmission, within 15 days of receipt, whether the proposal satisfies the

3.1 requirements of this section and has been approved. If the proposal does not comply
 3.2 with this section, the commissioner must specifically state why the proposal is not in
 3.3 compliance. If a proposed ~~agreement complies with this section~~ shared work plan has
 3.4 been approved, it must be implemented according to its terms.

3.5 (b) The commissioner may ~~reject an agreement~~ not approve a proposed shared work
 3.6 plan if the commissioner has cause to believe the proposal ~~is not~~ was submitted for the a
 3.7 purpose of other than preventing layoffs due to lack of work.

3.8 (c) The commissioner may not approve a proposed shared work plan if the employer
 3.9 has any unemployment tax or reimbursements, including any interest, fees, or penalties,
 3.10 due but unpaid.

3.11 (d) A shared work plan that has been approved by the commissioner is considered
 3.12 a contract that is binding on the employer and the department. This contract may be
 3.13 canceled or modified under subdivision 5.

3.14 Sec. 3. Minnesota Statutes 2012, section 268.136, is amended by adding a subdivision
 3.15 to read:

3.16 Subd. 2a. **Notice to participating employee.** The employer must provide written
 3.17 notification to each participating employee that the employer has submitted a proposed
 3.18 shared work plan. The notification must be provided to the employee no later than at
 3.19 the time the commissioner notifies the employer that a proposed shared work plan has
 3.20 been approved. The notification must inform the employee of the proposed terms of the
 3.21 shared work plan along with notice to the employee of the employee's right to apply for
 3.22 unemployment benefits.

3.23 Sec. 4. Minnesota Statutes 2012, section 268.136, subdivision 3, is amended to read:

3.24 Subd. 3. **Applicant requirements.** (a) An applicant, in order to be paid
 3.25 unemployment benefits under this section, must meet all of the requirements under section
 3.26 268.069, subdivision 1. The following provisions of section 268.085 do not apply to an
 3.27 applicant ~~under this section~~ in an approved shared work plan:

3.28 (1) ~~the deductible earnings provision of section 268.085,~~ under subdivision 5;

3.29 (2) the restriction under ~~section 268.085,~~ subdivision ~~6~~ 2, clause (6), if the applicant
 3.30 works exactly 32 hours in a week;

3.31 (3) the requirement of being available for suitable employment under subdivision 1,
 3.32 clause (4), but only if the applicant is (i) available for the normal hours of work per week
 3.33 with the shared work employer, or (ii) is in a training program when not working; and

4.1 (4) the requirement of actively seeking suitable employment under subdivision
 4.2 1, clause (5).

4.3 (b) An applicant is ineligible for unemployment benefits under this section for
 4.4 any week, if:

4.5 ~~(1) the applicant works more than 32 hours in a week in employment with one or~~
 4.6 ~~more employer; or~~

4.7 ~~(2) the applicant works more hours in a week for the shared work employer than~~
 4.8 ~~the reduced weekly hours provided for in the agreement.~~

4.9 Sec. 5. Minnesota Statutes 2012, section 268.136, subdivision 4, is amended to read:

4.10 Subd. 4. **Amount of unemployment benefits available.** (a) The weekly benefit
 4.11 amount and maximum amount of unemployment benefits available are computed
 4.12 according to section 268.07, except that an applicant is paid the amount of benefits
 4.13 available is a reduced amount in direct proportion to the reduction in hours set out in the
 4.14 shared work plan from the normal weekly hours.

4.15 (b) Regardless of paragraph (a), if the applicant works more hours in a week for the
 4.16 shared work employer than the reduced weekly hours provided for in the shared work
 4.17 plan, the amount of unemployment benefits available is a reduced amount in direct
 4.18 proportion to the reduction in hours actually worked from the normal weekly hours.

4.19 (c) If an applicant works fewer hours in a week for the shared work employee than
 4.20 set out in the shared work plan, the amount of unemployment benefits are available in
 4.21 accordance with paragraph (a).

4.22 Sec. 6. Minnesota Statutes 2012, section 268.136, subdivision 5, is amended to read:

4.23 Subd. 5. **Cancellation; modification.** (a) An employer may cancel ~~an agreement a~~
 4.24 shared work plan at any time upon seven calendar days' notice to the commissioner in a
 4.25 manner and format prescribed by the commissioner. The cancellation must be signed by
 4.26 an owner or officer of the employer.

4.27 (b) An employer may request that the commissioner allow modification of the shared
 4.28 work plan as to the hours of work each participating employee will work each week. The
 4.29 request must be sent in a manner and form prescribed by the commissioner. The request
 4.30 must be signed by an owner or officer of the employer. The commissioner must notify the
 4.31 employer as soon as possible if the modification is allowed.

4.32 ~~(b) (c)~~ (c) An employer that cancels an agreement or requests modification of a shared
 4.33 work plan must provide written notice to each participating employee in the group of the
 4.34 cancellation or requested modification at the time notice is sent to the commissioner.

5.1 ~~(e)~~ (d) If an employer cancels ~~an agreement~~ a shared work plan before the expiration
 5.2 date provided for in subdivision 1, a new ~~agreement~~ shared work plan may not be entered
 5.3 ~~into with~~ approved for that employer under this section for at least 60 calendar days.

5.4 ~~(d)~~ (e) The commissioner may immediately cancel any ~~agreement~~ shared work plan
 5.5 if the commissioner determines the ~~agreement~~ plan was based upon false information or
 5.6 the employer ~~is in breach~~ has failed to adhere to the terms of the ~~contract~~ shared work plan.
 5.7 The commissioner must immediately send written notice of cancellation to the employer.
 5.8 An employer that receives notice of cancellation ~~by the commissioner~~ must provide
 5.9 written notice to each participating ~~employer in the group~~ employee of the cancellation.

5.10 Sec. 7. Minnesota Statutes 2012, section 268.136, is amended by adding a subdivision
 5.11 to read:

5.12 Subd. 6. **Federal law.** This section is enacted to comply with the "short time
 5.13 compensation" requirements of the Federal Unemployment Tax Act, United States Code,
 5.14 title 26, section 3306 (v).

5.15 Sec. 8. Minnesota Statutes 2012, section 268.23, is amended to read:

5.16 **268.23 SEVERABLE.**

5.17 ~~In the event that~~ If the United States Department of Labor determines that any
 5.18 provision of the Minnesota Unemployment Insurance Law, ~~or any other provision of~~
 5.19 ~~Minnesota Statutes relating to the unemployment insurance program,~~ is not in conformity
 5.20 with, or is inconsistent with, the requirements of federal law, the provision has no force
 5.21 or effect; ~~but~~. If only a portion of the provision, or the application to any person or
 5.22 circumstances, is ~~held~~ determined not in conformity, or determined inconsistent, the
 5.23 remainder of the provision and the application of the provision to other persons or
 5.24 circumstances are not affected.

5.25 Sec. 9. **COMMISSIONER AUTHORIZED TO REQUEST SHARED WORK**
 5.26 **FUNDS.**

5.27 The commissioner of employment and economic development is authorized to
 5.28 request federal funding for Minnesota's "shared work" unemployment benefit program
 5.29 under Minnesota Statutes, section 268.136. Federal funding is available under the Middle
 5.30 Class Tax Relief and Job Creation Act of 2012, Public Law 112-96. Federal funding
 5.31 provided under that act for the "shared work" program must be immediately deposited
 5.32 in the Minnesota Unemployment Insurance Trust Fund. The exception under Minnesota
 5.33 Statutes, section 268.047, subdivision 2, clause (10), does not apply to the federal money.

6.1 **EFFECTIVE DATE.** This section is effective the day following final enactment.

6.2 Sec. 10. **EFFECTIVE DATE.**

6.3 Unless otherwise specified, this article is effective for shared work plans approved
6.4 on or after July 1, 2013.

6.5 **ARTICLE 2**

6.6 **HOUSEKEEPING AND POLICY**

6.7 Section 1. Minnesota Statutes 2012, section 116L.17, subdivision 4, is amended to read:

6.8 Subd. 4. **Use of funds.** Funds granted by the board under this section may be used
6.9 for any combination of the following, except as otherwise provided in this section:

6.10 (1) employment transition services such as developing readjustment plans for
6.11 individuals; outreach and intake; early readjustment; job or career counseling; testing;
6.12 orientation; assessment of skills and aptitudes; provision of occupational and labor market
6.13 information; job placement assistance; job search; job development; prelayoff assistance;
6.14 relocation assistance; ~~and~~ programs provided in cooperation with employers or labor
6.15 organizations to provide early intervention in the event of plant closings or substantial
6.16 layoffs; and entrepreneurial training and business consulting;

6.17 (2) support services, including assistance to help the participant relocate to employ
6.18 existing skills; out-of-area job search assistance; family care assistance, including child
6.19 care; commuting assistance; emergency housing and rental assistance; counseling
6.20 assistance, including personal and financial; health care; emergency health assistance;
6.21 emergency financial assistance; work-related tools and clothing; and other appropriate
6.22 support services that enable a person to participate in an employment and training program
6.23 with the goal of reemployment;

6.24 (3) specific, short-term training to help the participant enhance current skills
6.25 in a similar occupation or industry; entrepreneurial training, customized training, or
6.26 on-the-job training; basic and remedial education to enhance current skills; and literacy
6.27 and work-related English training for non-English speakers; and

6.28 (4) long-term training in a new occupation or industry, including occupational skills
6.29 training or customized training in an accredited program recognized by one or more
6.30 relevant industries. Long-term training shall only be provided to dislocated workers
6.31 whose skills are obsolete and who have no other transferable skills likely to result in
6.32 employment at a comparable wage rate. Training shall only be provided for occupations or
6.33 industries with reasonable expectations of job availability based on the service provider's
6.34 thorough assessment of local labor market information where the individual currently

7.1 resides or is willing to relocate. This clause shall not restrict training in personal services
7.2 or other such industries.

7.3 Sec. 2. Minnesota Statutes 2012, section 116L.17, is amended by adding a subdivision
7.4 to read:

7.5 Subd. 11. **Converting layoffs into Minnesota businesses (CLIMB).** Converting
7.6 layoffs into Minnesota businesses (CLIMB) is created to assist dislocated workers in
7.7 starting or growing a business. CLIMB must offer entrepreneurial training, business
7.8 consulting, and technical assistance to dislocated workers seeking to start or grow a
7.9 business. The commissioner, in cooperation with local workforce councils, must provide
7.10 the assistance in this subdivision by:

7.11 (1) encouraging closer ties between the Small Business Development Center
7.12 network, Small Business Development Center training providers; and workforce centers,
7.13 as well as other dislocated worker program service providers; and

7.14 (2) eliminating grantee performance data disincentives that would otherwise prevent
7.15 enrollment of dislocated workers in entrepreneurship-related training.

7.16 Sec. 3. Minnesota Statutes 2012, section 268.033, is amended to read:

7.17 **268.033 COMPUTATION OF TIME.**

7.18 The computation of time provisions of ~~section~~ sections 645.15 and 645.151 apply
7.19 to this chapter.

7.20 Sec. 4. Minnesota Statutes 2012, section 268.035, subdivision 2, is amended to read:

7.21 Subd. 2. **Agricultural employment.** "Agricultural employment" means ~~services~~
7.22 the same as the definition of "agricultural labor" under United States Code, title 26, section
7.23 3306(k) of the Federal Unemployment Tax Act, and Code of Federal Regulations, title 26,
7.24 section 31.3121(G)-1, further defining agricultural labor.

7.25 ~~(1) on a farm, in the employ of any person or family farm corporation in connection~~
7.26 ~~with cultivating the soil, or in connection with raising or harvesting any agricultural or~~
7.27 ~~horticultural commodity, including the raising, shearing, feeding, caring for, training, and~~
7.28 ~~management of livestock, bees, poultry, fur-bearing animals, and wildlife;~~

7.29 ~~(2) in the employ of the owner or tenant or other operator of a farm, in connection~~
7.30 ~~with the operation, management, conservation, improvement, or maintenance of the farm~~
7.31 ~~and its tools and equipment, or in salvaging timber or clearing land of brush and other debris~~
7.32 ~~left by a tornado-like storm, if the major part of the employment is performed on a farm;~~

8.1 ~~(3) in connection with the production or harvesting of any commodity defined as~~
 8.2 ~~an agricultural product in United States Code, title 7, section 1626 of the Agricultural~~
 8.3 ~~Marketing Act, or in connection with cotton ginning, or in connection with the operation~~
 8.4 ~~or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for~~
 8.5 ~~profit, used exclusively for supplying and storing water for farming purposes;~~

8.6 ~~(4) in the employ of the operator of a farm in handling, planting, drying, packing,~~
 8.7 ~~packaging, processing, freezing, grading, storing, or delivering to storage or to market~~
 8.8 ~~or to a carrier for transportation to market, in its unmanufactured state, any agricultural~~
 8.9 ~~or horticultural commodity; but only if the operator produced more than one-half of the~~
 8.10 ~~commodity with respect to which the employment is performed, or in the employ of a~~
 8.11 ~~group of operators of farms or a cooperative organization of which the operators are~~
 8.12 ~~members, but only if the operators produced more than one-half of the commodity with~~
 8.13 ~~respect to which the employment is performed; however, this clause is not applicable to~~
 8.14 ~~employment performed in connection with commercial canning or commercial freezing~~
 8.15 ~~or in connection with any agricultural or horticultural commodity after its delivery to a~~
 8.16 ~~terminal market for distribution for consumption; or~~

8.17 ~~(5) on a farm operated for profit if the employment is not in the course of the~~
 8.18 ~~employer's trade or business.~~

8.19 ~~For purposes of this subdivision, the term "farm" includes stock, dairy, poultry, fruit,~~
 8.20 ~~fur-bearing animals, and truck farms, plantations, ranches, nurseries, orchards, ranges,~~
 8.21 ~~greenhouses, or other similar structures used primarily for the raising of agricultural or~~
 8.22 ~~horticultural commodities.~~

8.23 Sec. 5. Minnesota Statutes 2012, section 268.035, subdivision 4, is amended to read:

8.24 Subd. 4. **Base period.** (a) "Base period," unless otherwise provided in this
 8.25 subdivision, means the most recent four completed calendar quarters before the effective
 8.26 date of an applicant's application for unemployment benefits if the application has an
 8.27 effective date occurring after the month following the most recent completed calendar
 8.28 quarter. ~~The base period defined in this paragraph is considered the primary base period.~~

8.29 The base period under this paragraph is as follows:

| | |
|--|--|
| 8.30 If the application for unemployment 8.31 benefits is effective on or between these 8.32 dates: 8.33 February 1 - March 31 8.34 May 1 - June 30 8.35 August 1 - September 30 8.36 November 1 - December 31 | The base period is the prior: January 1 - December 31 April 1 - March 31 July 1 - June 30 October 1 - September 30 |
|--|--|

9.1 (b) If an application for unemployment benefits has an effective date that is during
 9.2 the month following the most recent completed calendar quarter, then the base period is
 9.3 the first four of the most recent five completed calendar quarters before the effective
 9.4 date of an applicant's application for unemployment benefits. ~~The base period defined~~
 9.5 ~~in this paragraph is considered the secondary base period.~~ The base period under this
 9.6 paragraph is as follows:

| | | |
|------|---|-------------------------------|
| 9.7 | If the application for unemployment | The base period is the prior: |
| 9.8 | benefits is effective on or between these | |
| 9.9 | dates: | |
| 9.10 | January 1 - January 31 | October 1 - September 30 |
| 9.11 | April 1 - April 30 | January 1 - December 31 |
| 9.12 | July 1 - July 31 | April 1 - March 31 |
| 9.13 | October 1 - October 31 | July 1 - June 30 |

9.14 The base period in this paragraph is used when the wage detail report on the most
 9.15 recent completed calendar quarter is not yet available. According to section 268.044,
 9.16 subdivision 1, the wage detail report is due the last day of the month following the end
 9.17 of the calendar quarter.

9.18 (c) If the applicant has insufficient wage credits to establish a benefit account under
 9.19 paragraph (a) or (b), but during the base period under paragraph (a) or (b) an applicant
 9.20 received workers' compensation for temporary disability under chapter 176 or a similar
 9.21 federal law or similar law of another state, or if an applicant whose own serious illness
 9.22 caused a loss of work for which the applicant received compensation for loss of wages
 9.23 from some other source, the applicant may request ~~an extended~~ a base period as follows:

9.24 (1) if an applicant was compensated for a loss of work of seven to 13 weeks, the
 9.25 base period is the first four of the most recent six completed calendar quarters before the
 9.26 effective date of the application for unemployment benefits;

9.27 (2) if an applicant was compensated for a loss of work of 14 to 26 weeks, the base
 9.28 period is the first four of the most recent seven completed calendar quarters before the
 9.29 effective date of the application for unemployment benefits;

9.30 (3) if an applicant was compensated for a loss of work of 27 to 39 weeks, the base
 9.31 period is the first four of the most recent eight completed calendar quarters before the
 9.32 effective date of the application for unemployment benefits; and

9.33 (4) if an applicant was compensated for a loss of work of 40 to 52 weeks, the base
 9.34 period is the first four of the most recent nine completed calendar quarters before the
 9.35 effective date of the application for unemployment benefits.

9.36 (d) If the applicant applies for unemployment benefits with an effective date that
 9.37 is during the month following the most recent completed calendar quarter, but has

10.1 insufficient wage credits to establish a benefit account using the ~~secondary~~ base period
 10.2 ~~under paragraph (b), an alternate~~ of the first four of the most recent five completed
 10.3 calendar quarters, then a base period of the most recent four completed calendar quarters
 10.4 before the effective date of the applicant's application for unemployment benefits will be
 10.5 used. This base period is used even though the wage detail report on the most recent
 10.6 completed quarter has not yet been filed. In that circumstance, obtaining necessary wage
 10.7 credit information for establishment of a benefit account is done in accordance with
 10.8 section 268.07, subdivision ~~2~~ 1, paragraph (c).

10.9 (e) No base period under paragraph (a), (b), (c), or (d) may include wage credits
 10.10 upon which a prior benefit account was established.

10.11 (f) Regardless of paragraph (a), ~~the secondary~~ if an applicant applies for
 10.12 unemployment benefits with an effective date occurring after the month following the
 10.13 most recent calendar quarter, a base period in paragraph (b) of the first four of the most
 10.14 recent five completed calendar quarters must be used if the applicant has ~~has~~ would have more
 10.15 wage credits under that base period than under ~~the primary~~ a base period in paragraph
 10.16 (a) of the four most recent completed calendar quarters.

10.17 Sec. 6. Minnesota Statutes 2012, section 268.035, subdivision 11, is amended to read:

10.18 Subd. 11. **Covered agricultural employment.** (a) "Covered agricultural
 10.19 employment" means ~~agricultural employment where:~~

10.20 (1) ~~The~~ agricultural employment is performed for a person who:

10.21 (i) during any calendar quarter in ~~either~~ the current or the prior calendar year paid
 10.22 wages of \$20,000 or more to employees in agricultural employment; or

10.23 (ii) employed at least four employees in agricultural employment who each worked
 10.24 for some portion of a day in each of 20 different calendar weeks, whether or not the weeks
 10.25 were consecutive, in either the current or prior calendar year employed in agricultural
 10.26 employment four or more employees, regardless of whether they were employed at the
 10.27 same time;

10.28 (2) any employee who is a member of a crew furnished by a crew leader to be
 10.29 employed in agricultural employment for any other person is treated as an employee
 10.30 of the crew leader:

10.31 (i) if the crew leader holds a valid certificate of registration under United States
 10.32 Code, title 29, section 1802, the Migrant and Seasonal Agricultural Worker Protection
 10.33 Act; or substantially all of the members of the crew operate or maintain tractors,
 10.34 mechanized harvesting or crop dusting equipment, or any other mechanized equipment,
 10.35 that is provided by the crew leader; and

11.1 (ii) if the employee is not an employee of another person; and
 11.2 (3) any employee who is furnished by a crew leader to be employed in agricultural
 11.3 employment for any other person and who is not treated as an employee of the crew
 11.4 leader under clause (2):

11.5 (i) the other person and not the crew leader is treated as the employer of the
 11.6 employee; and

11.7 (ii) the other person is treated as having paid wages to the employee in an amount
 11.8 equal to the amount of wages paid to the employee by the crew leader (either on the
 11.9 crew leader's behalf or on behalf of the other person) for the agricultural employment
 11.10 performed for the other person.

11.11 ~~(4)~~ (b) The term "crew leader" under this subdivision means an individual who:

11.12 ~~(i)~~ (1) furnishes employees to be employed in agricultural employment for any
 11.13 other person;

11.14 ~~(ii)~~ (2) pays, ~~(either on the crew leader's own behalf or on behalf of the other~~
 11.15 ~~person),~~ the employees furnished by the crew leader for the agricultural employment
 11.16 performed by them; and

11.17 ~~(iii)~~ (3) has not entered into a written agreement with the other person under which
 11.18 the furnished employee is designated as an employee of the other person.

11.19 ~~(5)~~ (c) For purposes of paragraph (a), clause (1), item (ii), employment of an
 11.20 officer or shareholder of a family farm corporation is ~~excluded from covered agricultural~~
 11.21 ~~employment unless the corporation is an employer under United States Code, title 26,~~
 11.22 ~~section 3306(a)(2) of the Federal Unemployment Tax Act.~~

11.23 ~~(6)~~ and employment of an individual 16 years of age or under is ~~excluded from~~
 11.24 ~~covered agricultural employment unless~~ considered only if the employer is an employer
 11.25 under United States Code, title 26, section 3306(a)(2) of the Federal Unemployment
 11.26 Tax Act.

11.27 Sec. 7. Minnesota Statutes 2012, section 268.035, subdivision 12, is amended to read:

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

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

11.31 ~~(i) the employment is performed entirely in Minnesota;~~

11.32 ~~(ii)~~ (i) the employment during the quarter is performed primarily in Minnesota;

11.33 ~~and the employment performed outside Minnesota is incidental to the employment in~~

11.34 ~~Minnesota; or~~

12.1 ~~(iii)~~ (ii) the employment during the quarter is not performed primarily in Minnesota
 12.2 or any one other state but some of the employment is performed in Minnesota and the
 12.3 base of operations or the place from which the employment is directed or controlled
 12.4 is in Minnesota; or

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

12.9 ~~(2) an employee's employment during the calendar quarter wherever performed~~
 12.10 ~~within the United States or Canada, if:~~

12.11 ~~(i) the employment is not covered under the unemployment insurance program of~~
 12.12 ~~any other state or Canada; and~~

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

12.14 The term "performed primarily" for purposes of this clause means more than 50 percent
 12.15 as measured by the wages paid;

12.16 ~~(3)~~ (2) the employment during the calendar quarter ~~of,~~ performed entirely outside
 12.17 of the United States and Canada, by an employee who is a United States citizen of the
 12.18 United States, performed outside the United States, except in Canada, in the employ of
 12.19 an American employer if:

12.20 ~~(i)~~ the employer's principal place of business in the United States is located in
 12.21 Minnesota;

12.22 ~~(ii) the employer has no place of business in the United States, but the employer~~
 12.23 ~~is an individual who is a resident of Minnesota, or the employer is a corporation that is~~
 12.24 ~~organized under the laws of Minnesota, or the employer is a partnership or a trust and the~~
 12.25 ~~number of partners or trustees who are residents of Minnesota is greater than the number~~
 12.26 ~~who are residents of any one other state;~~

12.27 ~~(iii) none of the criteria of items (i) and (ii) is met but the employer has elected~~
 12.28 ~~coverage in Minnesota, or the employer having failed to elect coverage in any state,~~
 12.29 ~~an applicant has made an application for unemployment benefits under section 268.07,~~
 12.30 ~~based on the employment;~~

12.31 ~~(iv)~~ An "American employer," for the purposes of this subdivision clause, means
 12.32 an individual who is a resident of the United States, or a partnership if two-thirds or
 12.33 more of the partners are residents of the United States, or a trust, if all of the trustees are
 12.34 residents of the United States, or a corporation organized under ~~the laws of the United~~
 12.35 States, or the law of any state; ~~or and~~

13.1 ~~(v) as used in this subdivision, the term "United States" includes the states, the~~
 13.2 ~~District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands;~~

13.3 ~~(4) (3) all employment during the calendar quarter performed by an officer or~~
 13.4 ~~member of the crew of an American vessel on or in connection with the vessel, if the~~
 13.5 ~~operating office from which the operations of the vessel operating on navigable waters~~
 13.6 ~~within, or within and without, the United States are ordinarily and regularly supervised,~~
 13.7 ~~managed, directed, and controlled is in Minnesota; and.~~

13.8 ~~(5) (b) For the purposes of satisfying the period of ineligibility under section~~
 13.9 ~~268.095, subdivision 10, "covered employment" includes covered employment under an~~
 13.10 ~~unemployment insurance program;~~

13.11 ~~(1) of any other state or employment covered under an unemployment insurance~~
 13.12 ~~program;~~

13.13 ~~(2) established by an act of Congress; or~~

13.14 ~~(3) under the law of Canada.~~

13.15 Sec. 8. Minnesota Statutes 2012, section 268.035, subdivision 15, is amended to read:

13.16 Subd. 15. **Employment.** (a) "Employment" means service performed by:

13.17 (1) an individual who is considered an employee ~~under the common law of~~
 13.18 ~~employer-employee and not considered an independent contractor under (i) subdivision~~
 13.19 ~~9a or 25b or (ii) the common law of employer-employee;~~

13.20 (2) an officer of a corporation;

13.21 (3) a member of a limited liability company who is considered an employee under
 13.22 the common law of employer-employee;

13.23 (4) product demonstrators in retail stores or other locations to aid in the sale of
 13.24 products. The person that pays the wages is considered the employer; or

13.25 (5) an individual who performs services for a person for compensation, as:

13.26 (i) an agent-driver or commission-driver engaged in distributing meat products,
 13.27 vegetable products, fruit products, beverages, or laundry or dry cleaning services; or

13.28 (ii) a traveling or city salesperson, other than as an agent-driver or commission-driver,
 13.29 engaged full-time in the solicitation on behalf of the person, of orders from wholesalers,
 13.30 retailers, contractors, or operators of hotels, restaurants, or other similar establishments for
 13.31 merchandise for resale or supplies for use in their business operations.

13.32 This clause applies only if the contract of service provides that substantially all of
 13.33 the services are to be performed personally by the individual, and the services are part of
 13.34 a continuing relationship with the person for whom the services are performed, and the

14.1 individual does not have a substantial investment in facilities used in connection with the
14.2 performance of the services, other than facilities for transportation.

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

14.4 Sec. 9. Minnesota Statutes 2012, section 268.035, subdivision 22, is amended to read:

14.5 Subd. 22. **State and United States.** "State" and "United States" includes, in
14.6 addition to the states of the United States, the Commonwealth of Puerto Rico, the District
14.7 of Columbia, and the Virgin Islands.

14.8 Sec. 10. Minnesota Statutes 2012, section 268.035, subdivision 29, is amended to read:

14.9 Subd. 29. **Wages.** (a) "Wages" means all compensation for services, including
14.10 commissions; bonuses, awards, and prizes; severance payments; standby pay; vacation
14.11 and holiday pay; back pay as of the date of payment; tips and gratuities paid to an
14.12 employee by a customer of an employer and accounted for by the employee to the
14.13 employer; sickness and accident disability payments, except as otherwise provided in
14.14 this subdivision; and the cash value, but not less than the fair market value, of housing,
14.15 utilities, meals, exchanges of services, and any other goods and services provided to
14.16 compensate for an employee's services, except:

14.17 (1) the amount of any payment made to, or on behalf of, an employee under a plan
14.18 established by an employer that makes provision for employees generally or for a class or
14.19 classes of employees, including any amount paid by an employer for insurance or annuities,
14.20 or into a plan, to provide for a payment, on account of (i) retirement or (ii) medical and
14.21 hospitalization expenses in connection with sickness or accident disability, or (iii) death;

14.22 (2) the payment by an employer of the tax imposed upon an employee under United
14.23 States Code, title 26, section 3101 of the Federal Insurance Contribution Act, with respect
14.24 to compensation paid to an employee for domestic employment in a private household of
14.25 the employer or for agricultural employment;

14.26 (3) any payment made to, or on behalf of, an employee or beneficiary (i) from or
14.27 to a trust described in United States Code, title 26, section 401(a) of the federal Internal
14.28 Revenue Code, that is exempt from tax under section 501(a) at the time of the payment
14.29 unless the payment is made to an employee of the trust as compensation for services as an
14.30 employee and not as a beneficiary of the trust, or (ii) under or to an annuity plan that, at
14.31 the time of the payment, is a plan described in section 403(a);

14.32 (4) the value of any special discount or markdown allowed to an employee on goods
14.33 purchased from or services supplied by the employer where the purchases are optional and
14.34 do not constitute regular or systematic payment for services;

15.1 (5) customary and reasonable directors' fees paid to individuals who are not
15.2 otherwise employed by the corporation of which they are directors;

15.3 (6) the payment to employees for reimbursement of meal expenses when employees
15.4 are required to perform work after their regular hours;

15.5 (7) the payment into a trust or plan for purposes of providing legal or dental services
15.6 if provided for all employees generally or for a class or classes of employees;

15.7 (8) the value of parking facilities provided or paid for by an employer, in whole or in
15.8 part, if provided for all employees generally or for a class or classes of employees;

15.9 (9) royalties to an owner of a franchise, license, copyright, patent, oil, mineral,
15.10 or other right;

15.11 (10) advances or reimbursements for traveling or other bona fide ordinary and
15.12 necessary expenses incurred or reasonably expected to be incurred in the business of the
15.13 employer. Traveling and other reimbursed expenses must be identified either by making
15.14 separate payments or by specifically indicating the separate amounts where both wages
15.15 and expense allowances are combined in a single payment;

15.16 (11) residual payments to radio, television, and similar artists that accrue after
15.17 the production of television commercials, musical jingles, spot announcements, radio
15.18 transcriptions, film sound tracks, and similar activities;

15.19 (12) payments made to supplement unemployment benefits under a plan established
15.20 by an employer, that makes provisions for employees generally or for a class or classes of
15.21 employees under the written terms of an agreement, contract, trust arrangement, or other
15.22 instrument. The plan must provide supplemental payments solely for the supplementing
15.23 of weekly state or federal unemployment benefits. The plan must provide supplemental
15.24 payments only for those weeks the applicant has been paid regular, extended, or additional
15.25 unemployment benefits. The supplemental payments, when combined with the applicant's
15.26 weekly unemployment benefits paid, may not exceed the applicant's regular weekly pay.
15.27 The plan must not allow the assignment of supplemental payments or provide for any type
15.28 of additional payment. The plan must not require any consideration from the applicant
15.29 and must not be designed for the purpose of avoiding the payment of Social Security
15.30 obligations, or unemployment taxes on money disbursed from the plan;

15.31 (13) sickness or accident disability payments made by the employer after the
15.32 expiration of six calendar months following the last calendar month that the individual
15.33 worked for the employer;

15.34 (14) disability payments made under the provisions of any workers' compensation
15.35 law;

16.1 (15) sickness or accident disability payments made by a third-party payer such as
16.2 an insurance company; or

16.3 (16) payments made into a trust fund, or for the purchase of insurance or an annuity,
16.4 to provide for sickness or accident disability payments to employees under a plan or
16.5 system established by the employer that provides for the employer's employees generally
16.6 or for a class or classes of employees.

16.7 (b) Nothing in this subdivision excludes from the term "wages" any payment
16.8 made under any type of salary reduction agreement, including payments made under a
16.9 cash or deferred arrangement and cafeteria plan, as defined in United States Code, title
16.10 26, sections 401(k) and 125 of the federal Internal Revenue Code, to the extent that the
16.11 employee has the option to receive the payment in cash.

16.12 (c) Wages includes the total payment to the operator and supplier of a vehicle or
16.13 other equipment where the payment combines compensation for personal services as well
16.14 as compensation for the cost of operating and hiring the equipment in a single payment.

16.15 This paragraph does not apply if:

16.16 (1) there is a preexisting written agreement providing for allocation of specific
16.17 amounts; or

16.18 (2) at the time of each payment there is a written acknowledgement indicating
16.19 the separate allocated amounts.

16.20 (d) Wages includes payments made for services as a caretaker. Unless there is a
16.21 contract or other proof to the contrary, compensation is considered as being equally
16.22 received by a married couple where the employer makes payment to only one spouse, or
16.23 by all tenants of a household who perform services where two or more individuals share
16.24 the same dwelling and the employer makes payment to only one individual.

16.25 (d) (e) Wages includes payments made for services by a migrant family. Where
16.26 services are performed by a married couple or a family and an employer makes payment
16.27 to only one individual, each worker is considered as having received an equal share of the
16.28 compensation unless there is a contract or other proof to the contrary.

16.29 (e) (f) Wages includes advances or draws against future earnings, when paid, unless
16.30 the payments are designated as a loan or return of capital on the books of the employer
16.31 at the time of payment.

16.32 (f) (g) Wages includes payments made by a subchapter "S" corporation, as organized
16.33 under the Internal Revenue Code, to or on behalf of officers and shareholders that are
16.34 reasonable compensation for services performed for the corporation.

16.35 For a subchapter "S" corporation, wages does not include:

17.1 (1) a loan for business purposes to an officer or shareholder evidenced by a
17.2 promissory note signed by an officer before the payment of the loan proceeds and recorded
17.3 on the books and records of the corporation as a loan to an officer or shareholder;

17.4 (2) a repayment of a loan or payment of interest on a loan made by an officer to the
17.5 corporation and recorded on the books and records of the corporation as a liability;

17.6 (3) a reimbursement of reasonable corporation expenses incurred by an officer and
17.7 documented by a written expense voucher and recorded on the books and records of
17.8 the corporation as corporate expenses; and

17.9 (4) a reasonable lease or rental payment to an officer who owns property that is
17.10 leased or rented to the corporation.

17.11 Sec. 11. Minnesota Statutes 2012, section 268.042, subdivision 1, is amended to read:

17.12 Subdivision 1. **Employer registration.** (a) Each employer must, upon or before
17.13 the submission of its first wage detail report under section 268.044, register with the
17.14 commissioner for a tax account or a reimbursable account, by electronic transmission
17.15 in a format prescribed by the commissioner. The employer must provide all required
17.16 information for registration, including the actual physical street and city address of the
17.17 employer.

17.18 (b) Within 30 calendar days, each employer must notify the commissioner by
17.19 electronic transmission, in a format prescribed, of a change in legal entity, of the
17.20 transfer, sale, or acquisition of a business conducted in Minnesota, in whole or in part,
17.21 if the transaction results in the creation of a new or different employer or affects the
17.22 establishment of employer accounts, the assignment of tax rates, or the transfer of
17.23 experience rating history.

17.24 (c) Except as provided in subdivision 3, any person that is or becomes an employer
17.25 subject to the Minnesota Unemployment Insurance Law within any calendar year is
17.26 ~~considered to be~~ subject to this chapter the entire calendar year.

17.27 (d) Within 30 calendar days of the termination of business, an employer that has
17.28 been assigned a tax account or reimbursable account must notify the commissioner by
17.29 electronic transmission, in a format prescribed by the commissioner, if that employer does
17.30 not intend or expect to pay wages to any employees in covered employment during the
17.31 current or the next calendar year. Upon notification, the employer is no longer required
17.32 to file wage detail reports under section 268.044, subdivision 1, paragraph (d), and the
17.33 employer's account must be terminated.

18.1 (e) The commissioner, after notifying the employer, may terminate an employer's
 18.2 tax account if the employer has not filed a wage detail report as required under section
 18.3 268.044 for eight consecutive calendar quarters.

18.4 (f) An employer that has its account terminated regains its previous tax account
 18.5 under section 268.045, with the experience rating history of that account, if the employer
 18.6 again commences business and again pays wages in covered employment if:

18.7 (1) less than 14 calendar quarters have elapsed in which no wages were paid for
 18.8 covered employment;

18.9 (2) the experience rating history regained contains taxable wages; and

18.10 (3) the experience rating history has not been transferred to a successor under
 18.11 section 268.051, subdivision 4.

18.12 If the experience rating history is not regained under this paragraph, the employer must be
 18.13 assigned the new employer tax rate under section 268.051, subdivision 5.

18.14 **EFFECTIVE DATE.** This section is effective the day following final enactment.

18.15 Sec. 12. Minnesota Statutes 2012, section 268.043, is amended to read:

18.16 **268.043 DETERMINATIONS OF COVERAGE.**

18.17 (a) The commissioner, upon the commissioner's own motion or upon application of a
 18.18 person, must determine if that person is an employer or whether services performed for it
 18.19 constitute employment and covered employment, or whether any compensation constitutes
 18.20 wages, ~~and notify.~~ The commissioner must send to the person ~~of the~~ a determination of
 18.21 coverage. The determination of coverage is final unless the person files an appeal within
 18.22 20 calendar days after the commissioner sends the determination by mail or electronic
 18.23 transmission. Proceedings on the appeal are conducted in accordance with section 268.105.

18.24 (b) No person may be initially determined an employer, or that services performed
 18.25 for it were in employment or covered employment, for periods more than four years before
 18.26 the year in which the determination of coverage is made, unless the commissioner finds
 18.27 that there was fraudulent action to avoid liability under this chapter.

18.28 Sec. 13. Minnesota Statutes 2012, section 268.051, subdivision 4a, is amended to read:

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

18.31 (1) an experience rating history;

18.32 (2) the transfer of an experience rating history; ~~or~~

19.1 (3) the assignment of a tax rate for new employers under subdivision 5, paragraph
19.2 (a) or (b); or

19.3 (4) reimbursement required from a nonprofit or government employer, the
19.4 commissioner, to insure that the trust fund receives all the taxes and reimbursements that
19.5 would have been received had the action not occurred, may, effective the date of the
19.6 action, transfer all or part of an experience rating history and recompute the tax rate or,
19.7 assign the appropriate new employer tax rate, or assess a reimbursement.

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

19.12 Sec. 14. Minnesota Statutes 2012, section 268.051, subdivision 5, is amended to read:

19.13 Subd. 5. **Tax rate for new employers.** (a) Each new taxpaying employer that does
19.14 not qualify for an experience rating under subdivision 3, except new employers in a high
19.15 experience rating industry, must be assigned, for a calendar year, a tax rate the higher of
19.16 (1) one percent, or (2) the tax rate computed, to the nearest 1/100 of a percent, by dividing
19.17 the total amount of unemployment benefits paid all applicants during the 48 calendar
19.18 months ending on June 30 of the prior calendar year by the total taxable wages of all
19.19 taxpaying employers during the same period, plus the applicable base tax rate and any
19.20 additional assessments under subdivision 2, paragraph (c).

19.21 (b) Each new taxpaying employer in a high experience rating industry that does not
19.22 qualify for an experience rating under subdivision 3, must be assigned, for a calendar year,
19.23 a tax rate the higher of (1) that assigned under paragraph (a), or (2) the tax rate, computed
19.24 to the nearest 1/100 of a percent, by dividing the total amount of unemployment benefits
19.25 paid to all applicants from high experience rating industry employers during the 48
19.26 calendar months ending on June 30 of the prior calendar year by the total taxable wages
19.27 of all high experience rating industry employers during the same period, to a maximum
19.28 provided for under subdivision 3, paragraph (b), plus the applicable base tax rate and any
19.29 additional assessments under subdivision 2, paragraph (c).

19.30 (c) An employer is considered to be in a high experience rating industry if:

19.31 (1) the employer is engaged in residential, commercial, or industrial construction,
19.32 including general contractors;

19.33 (2) the employer is engaged in sand, gravel, or limestone mining;

19.34 (3) the employer is engaged in the manufacturing of concrete, concrete products,
19.35 or asphalt; or

20.1 (4) the employer is engaged in road building, repair, or resurfacing, including bridge
20.2 and tunnels and residential and commercial driveways and parking lots.

20.3 (d) Regardless of any law to the contrary, a taxpaying employer must be assigned a
20.4 tax rate under this subdivision if:

20.5 ~~(1) the employer registers for a tax account under section 268.042 and for each of~~
20.6 ~~the five calendar quarters after registering files a "no wages paid" report on wage detail~~
20.7 ~~under section 268.044; or had no taxable wages during the experience rating period under~~
20.8 ~~subdivision 3.~~

20.9 ~~(2) the employer has filed 14 consecutive quarterly "no wages paid" reports on~~
20.10 ~~wage detail under section 268.044.~~

20.11 (e) The commissioner must send to the new employer, by mail or electronic
20.12 transmission, a determination of tax rate. An employer may appeal the determination of
20.13 tax rate in accordance with the procedures in subdivision 6, paragraph (c).

20.14 **EFFECTIVE DATE.** This section is effective the day following final enactment.

20.15 Sec. 15. Minnesota Statutes 2012, section 268.057, subdivision 5, is amended to read:

20.16 Subd. 5. **Interest on amounts past due.** If any amounts due from an employer
20.17 under this chapter or section 116L.20, except late fees under section 268.044, are not
20.18 received on the date due the unpaid balance bears interest at the rate of one ~~and one-half~~
20.19 percent per month or any part thereof of a month. Interest collected under this subdivision
20.20 is credited to the contingent account.

20.21 **EFFECTIVE DATE.** This section applies to all interest assessed after January
20.22 1, 2014.

20.23 Sec. 16. Minnesota Statutes 2012, section 268.057, subdivision 7, is amended to read:

20.24 Subd. 7. **Credit adjustments, refunds.** (a) If an employer makes an application
20.25 for a credit adjustment of any amount paid under this chapter or section 116L.20 within
20.26 four years of the date that the payment was due, in a manner and format prescribed by
20.27 the commissioner, and the commissioner determines that the payment or any portion was
20.28 erroneous, the commissioner must make an adjustment and issue a credit without interest.
20.29 If a credit cannot be used, the commissioner must refund, without interest, the amount
20.30 erroneously paid. The commissioner, on the commissioner's own motion, may make a
20.31 credit adjustment or refund under this subdivision.

20.32 Any refund returned to the commissioner is considered unclaimed property under
20.33 chapter 345.

21.1 (b) If a credit adjustment or refund is denied in whole or in part, a ~~notice~~ determination
 21.2 of denial must be sent to the employer by mail or electronic transmission. The ~~notice~~
 21.3 determination of denial is final unless an employer files an appeal within 20 calendar days
 21.4 after sending. Proceedings on the appeal are conducted in accordance with section 268.105.

21.5 Sec. 17. Minnesota Statutes 2012, section 268.0625, subdivision 4, is amended to read:

21.6 Subd. 4. **Notice Determination and right to hearing.** At least 30 calendar days
 21.7 before the commissioner notifies a licensing authority, a ~~notice~~ determination of action
 21.8 under this section must be sent to the licensee by mail or electronic transmission. If the
 21.9 licensee disputes the action, the licensee must appeal within 20 calendar days after the
 21.10 sending of the ~~notice~~ determination of action to the licensee. The only issue on any
 21.11 appeal is whether the commissioner has complied with the requirements of this section.
 21.12 Proceedings on the appeal are conducted in accordance with section 268.105.

21.13 Sec. 18. Minnesota Statutes 2012, section 268.069, subdivision 3, is amended to read:

21.14 Subd. 3. **Common law.** (a) There is no equitable or common law denial or
 21.15 allowance of unemployment benefits.

21.16 (b) The equitable and common law concepts of constructive quit and constructive
 21.17 discharge do not apply to this chapter.

21.18 Sec. 19. Minnesota Statutes 2012, section 268.07, subdivision 1, is amended to read:

21.19 Subdivision 1. **Application for unemployment benefits; determination of benefit**
 21.20 **account.** (a) An application for unemployment benefits may be filed in person, by mail,
 21.21 or by electronic transmission as the commissioner may require. The applicant must be
 21.22 unemployed at the time the application is filed and must provide all requested information
 21.23 in the manner required. If the applicant is not unemployed at the time of the application
 21.24 or fails to provide all requested information, the communication is not considered an
 21.25 application for unemployment benefits.

21.26 (b) The commissioner must examine each application for unemployment benefits to
 21.27 determine the base period and the benefit year, and based upon all the covered employment
 21.28 in the base period the commissioner must determine the weekly unemployment benefit
 21.29 amount available, if any, and the maximum amount of unemployment benefits available, if
 21.30 any. The determination, which is a document separate and distinct from a document titled
 21.31 a determination of eligibility or determination of ineligibility issued under section 268.101,
 21.32 must be titled determination of benefit account. A determination of benefit account must
 21.33 be sent to the applicant and all base period employers, by mail or electronic transmission.

22.1 (c) If a base period employer did not provide wage detail information for the
 22.2 applicant as required under section 268.044, or provided erroneous information, or
 22.3 wage detail is not yet due and the applicant is using ~~an alternate~~ a base period under
 22.4 section 268.035, subdivision 4, paragraph (d), the commissioner may accept an applicant
 22.5 certification of wage credits, based upon the applicant's records, and issue a determination
 22.6 of benefit account.

22.7 (d) An employer must provide wage detail information on an applicant within five
 22.8 calendar days of request by the commissioner, in a manner and format requested, when:

22.9 (1) the applicant is using ~~an alternate~~ a base period under section 268.035,
 22.10 subdivision 4, paragraph (d); and

22.11 (2) wage detail under section 268.044 is not yet required to have been filed by
 22.12 the employer.

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

22.20 (f) If an amended determination of benefit account reduces the weekly
 22.21 unemployment benefit amount or maximum amount of unemployment benefits available,
 22.22 any unemployment benefits that have been paid greater than the applicant was entitled
 22.23 is considered an overpayment of unemployment benefits. A determination or amended
 22.24 determination issued under this section that results in an overpayment of unemployment
 22.25 benefits must set out the amount of the overpayment and the requirement under section
 22.26 268.18, subdivision 1, that the overpaid unemployment benefits must be repaid.

22.27 Sec. 20. Minnesota Statutes 2012, section 268.07, subdivision 3b, is amended to read:

22.28 Subd. 3b. **Limitations on applications and benefit accounts.** (a) An application for
 22.29 unemployment benefits is effective the Sunday of the calendar week that the application
 22.30 was filed. An application for unemployment benefits may be backdated one calendar week
 22.31 before the Sunday of the week the application was actually filed if the applicant requests
 22.32 the backdating at the time the application is filed. An application may be backdated only if
 22.33 the applicant ~~had no employment~~ was unemployed during the period of the backdating.

22.34 If an individual attempted to file an application for unemployment benefits, but was

23.1 prevented from filing an application by the department, the application is effective the
 23.2 Sunday of the calendar week the individual first attempted to file an application.

23.3 (b) A benefit account established under subdivision 2 is effective the date the
 23.4 application for unemployment benefits was effective.

23.5 (c) A benefit account, once established, may later be withdrawn only if:

23.6 (1) the applicant has not been paid any unemployment benefits on that benefit
 23.7 account; and

23.8 (2) a new application for unemployment benefits is filed and a new benefit account is
 23.9 established at the time of the withdrawal.

23.10 A determination or amended determination of eligibility or ineligibility issued under
 23.11 section 268.101, that was sent before the withdrawal of the benefit account, remains in
 23.12 effect and is not voided by the withdrawal of the benefit account.

23.13 (d) An application for unemployment benefits is not allowed before the Sunday
 23.14 following the expiration of the benefit year on a prior benefit account. Except as allowed
 23.15 under paragraph (c), an applicant may establish only one benefit account each 52 calendar
 23.16 weeks.

23.17 Sec. 21. Minnesota Statutes 2012, section 268.085, subdivision 3, is amended to read:

23.18 Subd. 3. **Payments that delay unemployment benefits.** (a) An applicant is not
 23.19 eligible to receive unemployment benefits for any week with respect to which the applicant
 23.20 is receiving, has received, or ~~has filed for payment~~ will receive, equal to or in excess of the
 23.21 applicant's weekly unemployment benefit amount, in the form of:

23.22 (1) vacation pay, sick pay, or personal time off pay, also known as "PTO," paid
 23.23 upon temporary, indefinite, or seasonal separation. This clause does not apply to ~~(i)~~
 23.24 vacation pay, sick pay, or personal time off pay, paid (i) upon a permanent separation from
 23.25 employment, or ~~(ii) vacation pay, sick pay, or personal time off pay, paid~~ from a vacation
 23.26 fund administered by a union or a third party not under the control of the employer;

23.27 (2) ~~severance pay, bonus pay, and any other payments, except earnings under~~
 23.28 ~~subdivision 5, and back pay under subdivision 6,~~ paid by an employer because of, ~~upon,~~
 23.29 ~~or after~~ a separation from employment, but only such as severance pay and retention
 23.30 pay, if the payment is considered wages at the time of payment under section 268.035,
 23.31 subdivision 29. This clause does not apply to back pay under subdivision 6 or to vacation
 23.32 pay, sick pay, or personal time off pay under clause (1); or

23.33 (3) pension, retirement, or annuity payments from any plan contributed to by a base
 23.34 period employer ~~including the United States government, except Social Security benefits~~
 23.35 ~~that are provided for in subdivision 4.~~ The base period employer is considered to have

24.1 contributed to the plan if the contribution is excluded from the definition of wages under
 24.2 section 268.035, subdivision 29, paragraph (a), clause (1). This clause does not apply to
 24.3 Social Security benefits under subdivision 4.

24.4 If the pension, retirement, or annuity payment is paid in a lump sum, an applicant is
 24.5 not considered to have received a payment if (i) the applicant ~~immediately deposits~~, within
 24.6 60 calendar days, makes a rollover contribution of that payment in a qualified pension
 24.7 plan or account, or (ii) that payment is an early distribution for which the applicant paid
 24.8 an early distribution penalty under the Internal Revenue Code, United States Code, title
 24.9 26, section 72(t)(1).

24.10 (b) This subdivision applies to all the weeks of payment. Payments under paragraph
 24.11 (a), clause (1), are applied to the period immediately following the last day of employment.
 24.12 Payments under paragraph (a), clause (2), made within 13 weeks of the last day of
 24.13 employment, are applied to the period immediately following the last day of employment.

24.14 The number of weeks of payment is determined as follows:

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

24.17 (2) if the payment is made in a lump sum, that sum is divided by the applicant's last
 24.18 level of regular weekly pay from the employer.

24.19 (c) If the payment is less than the applicant's weekly unemployment benefit amount,
 24.20 unemployment benefits are reduced by the amount of the payment.

24.21 **EFFECTIVE DATE.** The amendments to paragraph (a) are effective July 1, 2013.
 24.22 The amendments to paragraph (b) are effective for determinations and decisions issued
 24.23 after June 30, 2013.

24.24 Sec. 22. Minnesota Statutes 2012, section 268.085, subdivision 4, is amended to read:

24.25 Subd. 4. **Social Security old age benefits.** (a) Any applicant aged 62 or over is
 24.26 required to state when filing an application for unemployment benefits and when filing
 24.27 continued requests for unemployment benefits if the applicant is receiving, has filed
 24.28 for, or intends to file for, primary Social Security old age benefits ~~for any week during~~
 24.29 ~~the benefit year.~~

24.30 Unless paragraph (b) applies, 50 percent of the weekly equivalent of the primary
 24.31 Social Security old age benefit the applicant has received, has filed for, or intends to file
 24.32 for, with respect to that week must be deducted from an applicant's weekly unemployment
 24.33 benefit amount.

24.34 (b) If all of the applicant's wage credits were earned while the applicant was claiming
 24.35 Social Security old age benefits, there is no deduction from the applicant's weekly

25.1 unemployment benefit amount. The purpose of this paragraph is to ensure that an applicant
 25.2 who is claiming Social Security benefits has demonstrated a desire and ability to work.

25.3 (c) Information from the Social Security Administration is considered conclusive,
 25.4 absent specific evidence showing that the information was erroneous.

25.5 (d) This subdivision does not apply to Social Security survivor benefits.

25.6 Subd. 4a. Social Security disability benefits. ~~(e) (a)~~ An applicant who is receiving,
 25.7 has received, or has ~~filed~~ applied for primary Social Security disability benefits for any
 25.8 week ~~during the benefit year must be determined unavailable for suitable employment~~ is
 25.9 ineligible for unemployment benefits for that week, unless:

25.10 (1) the Social Security Administration approved the collecting of primary Social
 25.11 Security disability benefits each month the applicant was employed during the base
 25.12 period; or

25.13 (2) the applicant provides a statement from an appropriate health care professional
 25.14 who is aware of the applicant's Social Security disability claim and the basis for that claim,
 25.15 certifying that the applicant is available for suitable employment.

25.16 (b) If an applicant meets the requirements of paragraph (a), clause (1), there is no
 25.17 deduction from the applicant's weekly benefit amount for any Social Security disability
 25.18 benefits.

25.19 (c) If ~~only~~ an applicant meets the requirements of paragraph (a), clause (2) ~~applies,~~
 25.20 then, there must be deducted from the applicant's weekly unemployment benefit amount
 25.21 50 percent of the weekly equivalent of the primary Social Security disability benefits
 25.22 the applicant is receiving, has received, or has ~~filed~~ applied for, with respect to that
 25.23 week; ~~provided, however, that.~~ If the Social Security Administration determines that
 25.24 ~~an individual~~ the applicant is not entitled to receive primary Social Security disability
 25.25 benefits for any week the applicant has applied for those benefits, ~~the 50 percent deduction~~
 25.26 then this paragraph does not apply to that week.

25.27 (d) Information from the Social Security Administration is considered conclusive,
 25.28 absent specific evidence showing that the information was erroneous.

25.29 (e) This subdivision does not apply to Social Security survivor benefits.

25.30 Sec. 23. Minnesota Statutes 2012, section 268.085, subdivision 5, is amended to read:

25.31 Subd. 5. **Deductible earnings.** (a) If the applicant has earnings, including holiday
 25.32 pay, with respect to any week, from employment, covered employment, noncovered
 25.33 employment, self-employment, or volunteer work, equal to or in excess of the applicant's
 25.34 weekly unemployment benefit amount, the applicant is ineligible for unemployment
 25.35 benefits for that week.

26.1 (b) If the applicant has earnings, including holiday pay, with respect to any week,
 26.2 that is less than the applicant's weekly unemployment benefit amount, from employment,
 26.3 covered employment, noncovered employment, self-employment, or volunteer work, 50
 26.4 percent of the earnings are deducted from the weekly unemployment benefit amount.

26.5 (c) No deduction is made from an applicant's weekly unemployment benefit amount
 26.6 for earnings from service in the National Guard or a United States military reserve unit or
 26.7 from direct service as a volunteer firefighter or volunteer ambulance service personnel.
 26.8 This exception to paragraphs (a) and (b) does not apply to on-call or standby pay provided
 26.9 to a volunteer firefighter or volunteer ambulance service personnel. No deduction is made
 26.10 for jury duty pay or for pay as an election judge.

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

26.13 (e) Deductible earnings does not include any money considered a deductible
 26.14 payment under subdivision 3, but includes all compensation considered wages under
 26.15 section 268.035, subdivision 29, and any other compensation considered earned income
 26.16 under state and federal law for income tax purposes.

26.17 Sec. 24. Minnesota Statutes 2012, section 268.085, subdivision 6, is amended to read:

26.18 Subd. 6. **Receipt of back pay.** (a) Back pay received by an applicant within 24
 26.19 months of the establishment of the benefit account with respect to any week ~~occurring~~
 26.20 during the benefit year must be deducted from unemployment benefits paid for that week,
 26.21 and the applicant is considered to have been overpaid the unemployment benefits for the
 26.22 purposes of section 268.18, subdivision 1.

26.23 If the back pay is not paid with respect to a specific period, the back pay must be
 26.24 applied to the period immediately following the last day of employment.

26.25 (b) If the back pay is reduced by the amount of unemployment benefits that have
 26.26 been paid, the amount of back pay withheld and not paid the applicant must be:

26.27 (1) paid by the taxpaying or reimbursing employer to the trust fund within 30
 26.28 calendar days and is subject to the same collection procedures that apply to past due
 26.29 taxes and reimbursements; and

26.30 (2) when received by the trust fund:

26.31 (i) an overpayment of unemployment benefits must be created which, under section
 26.32 268.047, subdivision 2, clause (8), clears the employer's tax or reimbursable account
 26.33 of any effect; and

27.1 (ii) the back pay must then be applied to the unemployment benefit overpayments
 27.2 resulting from the payment of the back pay; and overpayment, eliminating any effect on
 27.3 the applicant.

27.4 ~~(3) credited to the maximum amount of unemployment benefits available to the~~
 27.5 ~~applicant in a benefit year that includes the weeks for which back pay was deducted.~~

27.6 When implemented, this paragraph must produce the following results: (1) that
 27.7 an employer neither overpays nor underpays the employer's proper portion of the
 27.8 unemployment benefit costs; and (2) that the applicant is placed in the same position as
 27.9 never having been paid the unemployment benefits.

27.10 (c) The unemployment benefits paid considered overpaid the applicant must be
 27.11 under this subdivision are, according to section 268.047, subdivision 2, clause (8),
 27.12 removed from the computation of the tax rate for taxpaying employers and removed from
 27.13 the reimbursable account for nonprofit and government employers that have elected to be
 27.14 liable for reimbursements in the calendar quarter the trust fund receives payment.

27.15 ~~(d) Payments to the trust fund under this subdivision are considered as made by~~
 27.16 ~~the applicant.~~

27.17 Sec. 25. Minnesota Statutes 2012, section 268.0865, subdivision 3, is amended to read:

27.18 **Subd. 3. Continued request for unemployment benefits by electronic**
 27.19 **transmission.** (a) A continued request for unemployment benefits by electronic
 27.20 transmission must be filed to that electronic mail address, telephone number, or Internet
 27.21 address prescribed by the commissioner for that applicant. In order to constitute a
 27.22 continued request, all information asked for, including information authenticating that the
 27.23 applicant is sending the transmission, must be provided in the format required. If all of the
 27.24 information asked for is not provided, the communication does not constitute a continued
 27.25 request for unemployment benefits.

27.26 (b) The electronic transmission communication must be filed ~~on the date and during~~
 27.27 ~~the time of day designated for the applicant for filing a continued request by electronic~~
 27.28 ~~transmission during the week following the week for which payment is requested.~~

27.29 (c) If the electronic transmission continued request is not filed ~~on the date and~~
 27.30 ~~during the time of day designated as required under paragraph (b),~~ a continued request
 27.31 by electronic transmission must be accepted if the applicant files the continued request
 27.32 by electronic transmission within ~~two~~ three calendar weeks following the week ~~in which~~
 27.33 ~~the date designated occurred for which payment is requested.~~ If the continued request by
 27.34 electronic transmission is not filed within ~~two~~ three calendar weeks following the week
 27.35 ~~in which the date designated occurred for which payment is requested,~~ the electronic

28.1 continued request will not be accepted and the applicant is ineligible for unemployment
28.2 benefits for the period covered by the continued request, unless the applicant shows good
28.3 cause for failing to file the continued request by electronic transmission within the time
28.4 period required.

28.5 Sec. 26. Minnesota Statutes 2012, section 268.0865, subdivision 4, is amended to read:

28.6 Subd. 4. **Continued request for unemployment benefits by mail.** (a) A
28.7 continued request for unemployment benefits by mail must be on a form prescribed by
28.8 the commissioner. The form, in order to constitute a continued request, must be totally
28.9 completed and signed by the applicant. The form must be filed ~~on the date required for the~~
28.10 ~~applicant for filing a continued request~~ by mail, in an envelope with postage prepaid, and
28.11 sent to the address designated during the week following the week for which payment is
28.12 requested.

28.13 (b) If the mail continued request for unemployment benefits is not filed ~~on the date~~
28.14 ~~designated~~ as required under paragraph (a), a continued request must be accepted if the
28.15 form is filed by mail within ~~two~~ three calendar weeks following the week ~~in which the~~
28.16 ~~date designated occurred~~ for which payment is requested. If the form is not filed within
28.17 ~~two~~ three calendar weeks following the week ~~in which the date designated occurred~~ for
28.18 which payment is required, the form will not be accepted and the applicant is ineligible for
28.19 unemployment benefits for the period covered by the continued request for unemployment
28.20 benefits, unless the applicant shows good cause for failing to file the form by mail within
28.21 the time period required.

28.22 (c) If the applicant has been designated to file a continued request for unemployment
28.23 benefits by mail, an applicant may submit the form by facsimile transmission ~~on the day~~
28.24 ~~otherwise required for mailing~~, or within ~~two~~ three calendar weeks following the week ~~in~~
28.25 ~~which the date designated occurred~~ for which payment is requested. A form submitted by
28.26 facsimile transmission must be sent only to the telephone number assigned for that purpose.

28.27 (d) An applicant who has been designated to file a continued request by mail may
28.28 personally deliver a continued request form only to the location to which the form was
28.29 otherwise designated to be mailed.

28.30 Sec. 27. Minnesota Statutes 2012, section 268.095, subdivision 2, is amended to read:

28.31 Subd. 2. **Quit defined.** (a) A quit from employment occurs when the decision to
28.32 end the employment was, at the time the employment ended, the employee's. A notice of
28.33 quitting is not considered a quit at the time the notice is given. A notice of quitting is an
28.34 expression of the employee's intention to quit the employment at a future time.

29.1 (b) An employee who has been notified that the employee will be discharged in the
29.2 future, who chooses to end the employment while employment in any capacity is still
29.3 available, is considered to have quit the employment.

29.4 (c) An employee who seeks to withdraw a previously submitted notice of quitting
29.5 is considered to have quit the employment, as of the intended date of quitting, if the
29.6 employer does not agree that the notice may be withdrawn.

29.7 (d) An applicant who, within five calendar days after completion of a suitable job
29.8 assignment from a staffing service (1) fails without good cause to affirmatively request an
29.9 additional suitable job assignment, (2) refuses without good cause an additional suitable
29.10 job assignment offered, or (3) accepts employment with the client of the staffing service, is
29.11 considered to have quit employment with the staffing service. Accepting employment with
29.12 the client of the staffing service meets the requirements of the exception to ineligibility
29.13 under subdivision 1, clause (2).

29.14 This paragraph applies only if, at the time of beginning of employment with the
29.15 staffing service, the applicant signed and was provided a copy of a separate document
29.16 written in clear and concise language that informed the applicant of this paragraph and
29.17 that unemployment benefits may be affected.

29.18 For purposes of this paragraph, "good cause" is a reason that is significant and would
29.19 compel an average, reasonable worker, who would otherwise want an additional suitable
29.20 job assignment with the staffing service (1) to fail to contact the staffing service, or (2)
29.21 to refuse an offered assignment.

29.22 Sec. 28. Minnesota Statutes 2012, section 268.095, subdivision 3, is amended to read:

29.23 Subd. 3. **Good reason caused by the employer defined.** (a) A good reason caused
29.24 by the employer for quitting is a reason:

29.25 (1) that is directly related to the employment and for which the employer is
29.26 responsible;

29.27 (2) that is adverse to the worker; and

29.28 (3) that would compel an average, reasonable worker to quit and become
29.29 unemployed rather than remaining in the employment.

29.30 (b) The analysis required in paragraph (a) must be applied to the specific facts
29.31 of each case.

29.32 (c) If an applicant was subjected to adverse working conditions by the employer, the
29.33 applicant must complain to the employer and give the employer a reasonable opportunity
29.34 to correct the adverse working conditions before that may be considered a good reason

30.1 caused by the employer for quitting. This paragraph does not apply to unilateral reductions
 30.2 in wages or hours.

30.3 (d) A reason for quitting employment is not considered a good reason caused by
 30.4 the employer for quitting if the reason for quitting occurred because of the applicant's
 30.5 employment misconduct.

30.6 (e) Notification of discharge in the future, including a layoff because of lack of work,
 30.7 is not considered a good reason caused by the employer for quitting.

30.8 (f) An applicant has a good reason caused by the employer for quitting if it results
 30.9 from sexual harassment of which the employer was aware, or should have been aware,
 30.10 and the employer failed to take timely and appropriate action. Sexual harassment means
 30.11 unwelcome sexual advances, requests for sexual favors, sexually motivated physical
 30.12 contact or other conduct or communication of a sexual nature when:

30.13 (1) the applicant's submission to the conduct or communication is made a term
 30.14 or condition of the employment;

30.15 (2) the applicant's submission to or rejection of the conduct or communication is the
 30.16 basis for decisions affecting employment; or

30.17 (3) the conduct or communication has the purpose or effect of substantially
 30.18 interfering with an applicant's work performance or creating an intimidating, hostile, or
 30.19 offensive working environment.

30.20 (g) The definition of a good reason caused by the employer for quitting employment
 30.21 provided by this subdivision is exclusive and no other definition applies.

30.22 Sec. 29. Minnesota Statutes 2012, section 268.103, subdivision 2a, is amended to read:

30.23 Subd. 2a. **Employer-agent appeals filed online.** (a) If an agent, including an
 30.24 attorney-at-law, files an appeal on behalf of an employer, the appeal must be filed online.

30.25 The appeal must be filed through the electronic address provided on the determination
 30.26 being appealed. Use of another method of filing does not constitute an appeal. This
 30.27 paragraph does not apply to an employee filing an appeal on behalf of an employer.

30.28 (b) All information requested when the appeal is filed must be supplied or the
 30.29 communication does not constitute an appeal.

30.30 Sec. 30. Minnesota Statutes 2012, section 268.105, is amended to read:

30.31 **268.105 APPEALS.**

30.32 Subdivision 1. **Evidentiary Notice of hearing by ~~unemployment law judge~~.**

30.33 (a) Upon a timely appeal to a determination having been filed, the ~~department chief~~
 30.34 unemployment law judge must send, by mail or electronic transmission, a notice of ~~appeal~~

31.1 hearing to all involved parties that an appeal has been filed, and that a de novo due process
 31.2 evidentiary hearing will be scheduled conducted by an unemployment law judge.

31.3 (b) The notice of hearing must include materials that set out the parties' rights and
 31.4 responsibilities regarding the hearing. The notice materials must explain that the facts
 31.5 will be determined by the unemployment law judge based upon a preponderance of the
 31.6 evidence. The notice must presented at the hearing and explain in clear and simple
 31.7 language the meaning of the term "preponderance of the evidence."

31.8 (c) The department notice of hearing must set a time and place for a de novo due
 31.9 process evidentiary hearing and send date and must state the issues to be considered
 31.10 and the method by which the hearing will be conducted. The notice to any involved
 31.11 applicant and any involved employer, by mail or electronic transmission, must be sent
 31.12 not less than ten calendar days before the date of the hearing. The parties may waive the
 31.13 ten-calendar-day notice requirement. Rescheduled hearings and continued hearings do not
 31.14 require an additional ten-calendar-day notice.

31.15 Subd. 1a. **Definitions.** The words and terms used in this subdivision have, for
 31.16 purposes of the Minnesota Unemployment Insurance Law, the following meaning:

31.17 (1) "Decision" means a written ruling by an unemployment law judge on a particular
 31.18 issue. Decisions under subdivision 1c are subject to request for reconsideration and
 31.19 decisions under subdivision 2 are subject to review by the Minnesota Court of Appeals.
 31.20 A decision must be specifically identified as a "decision."

31.21 (2) "Hearing" means the de novo evidentiary hearing under subdivision 1.

31.22 (3) "Order" means a written directive by an unemployment law judge dealing with
 31.23 a matter of procedure. Orders are not subject to appeal. An order must be specifically
 31.24 identified as an "order." An order is not a "decision" under the Minnesota Unemployment
 31.25 Insurance Law.

31.26 (4) "Party" means an involved applicant or involved employer whose legal rights will
 31.27 be directly determined in a hearing or on request for reconsideration. The department is not
 31.28 a party to any proceedings before an unemployment law judge. The department becomes a
 31.29 party, and is the primary responding party, before the Court of Appeals under subdivision 7.

31.30 Subd. 1b. **Conduct of hearing.** (a) The evidentiary hearing is conducted by an
 31.31 unemployment law judge de novo as an evidence gathering inquiry. At the beginning of
 31.32 the hearing the unemployment law judge must fully explain:

31.33 (1) how the hearing will be conducted, and the role of the judge in developing
 31.34 the record;

31.35 (2) that the information obtained will be used to decide the parties' rights under the
 31.36 Minnesota Unemployment Insurance Law;

32.1 (3) that certain other government officials may have access to information provided
 32.2 at the hearing if allowed by statute and that the information provided may be disclosed
 32.3 under a district court order;

32.4 (4) that the applicant has parties have the right to request that the hearing be
 32.5 rescheduled continued so that documents or witnesses can be subpoenaed; and

32.6 (5) that the facts will be determined based on a preponderance of the evidence, and,
 32.7 in clear and simple language, the meaning of the term "preponderance of the evidence."

32.8 (b) The unemployment law judge must ensure that all relevant facts are clearly and
 32.9 fully developed and must assist all parties in the presentation of the evidence.

32.10 (c) The department may adopt rules on evidentiary hearings. The rules need
 32.11 not conform to common law or statutory rules of evidence and other technical rules of
 32.12 procedure.

32.13 (d) The department chief unemployment law judge has discretion regarding the
 32.14 method by which the evidentiary hearing is conducted. A report of any employee of the
 32.15 department, except a determination, made in the regular course of the employee's duties, is
 32.16 competent evidence of the facts contained in it. An affidavit or written statement based on
 32.17 personal knowledge and signed under penalty of perjury is competent evidence of the facts
 32.18 contained in it; however, the veracity of statements contained within the document or the
 32.19 credibility of the witness making the statement may be disputed with other documents or
 32.20 testimony and production of such documents or testimony may be compelled by subpoena.

32.21 Subd. 1c. **Decisions.** (e) (a) After the conclusion of the hearing, upon the evidence
 32.22 obtained, the unemployment law judge must make findings of fact and decision and send
 32.23 those, by mail or electronic transmission, to all involved parties. When the credibility of
 32.24 an involved party or a witness testifying in an evidentiary a hearing has a significant effect
 32.25 on the outcome of a decision, the unemployment law judge must set out the reason for
 32.26 crediting or discrediting that testimony. The unemployment law judge's decision is final
 32.27 unless a request for reconsideration is filed under subdivision 2.

32.28 (d) Regardless of paragraph (e), (b) If the appealing party fails to participate in the
 32.29 evidentiary hearing, the unemployment law judge has the discretion to dismiss the appeal
 32.30 by summary order decision. By failing to participate, the appealing party is considered to
 32.31 have failed to exhaust available administrative remedies unless the appealing party files
 32.32 a request for reconsideration under subdivision 2 and establishes good cause for failing
 32.33 to participate in the evidentiary hearing under subdivision 2, paragraph (d). Submission
 32.34 of a written statement does not constitute participation. The applicant must participate
 32.35 personally and appearance solely by a representative does not constitute participation.

33.1 (e) (c) The unemployment law judge must issue a decision dismissing the appeal
 33.2 as untimely if the judge decides the appeal to the determination was not filed within the
 33.3 20-calendar-day limit. The unemployment law judge may dismiss the appeal by summary
 33.4 decision, or the judge may conduct a hearing to obtain evidence on the timeliness of
 33.5 the appeal.

33.6 Subd. 1d. **Unemployment law judges.** (a) Only employees of the department who
 33.7 are attorneys licensed to practice law in Minnesota may serve as the chief unemployment
 33.8 law judge, senior unemployment law judges who are supervisors, or unemployment law
 33.9 judges. The commissioner must designate a chief unemployment law judge.

33.10 (b) The chief unemployment law judge must assign the unemployment law judge
 33.11 to conduct the hearing. The chief unemployment law judge may transfer to another
 33.12 unemployment law judge any proceedings pending before an unemployment law judge
 33.13 under this section.

33.14 (f) (c) A full-time unemployment law judge must be paid a salary within a range
 33.15 directly tied to the salary set under section 15A.083, subdivision 7, for a workers'
 33.16 compensation judge. The salary paid within that range to any single unemployment law
 33.17 judge is based on experience and performance.

33.18 Subd. 1e. **Consolidation of issues; consideration of additional issues.** Upon
 33.19 request of a party or on the unemployment law judge's own motion, the judge may
 33.20 consolidate for hearing issues involving the same parties. The unemployment law judge
 33.21 may take testimony and render a decision on issues not listed on the notice of hearing if
 33.22 each party is notified on the record, is advised of the right to object, and does not object. If
 33.23 a party objects, the unemployment law judge must:

33.24 (1) continue the hearing to allow the party to prepare for consideration of the
 33.25 additional issue; or

33.26 (2) direct that the department make and send to the parties, by mail or electronic
 33.27 transmission, a determination on the issue.

33.28 Subd. 2. **Request for reconsideration.** (a) Any involved applicant, involved
 33.29 employer party, or the commissioner, may, within 20 calendar days of the sending
 33.30 of the unemployment law judge's decision under subdivision 1c, file a request for
 33.31 reconsideration asking the unemployment law judge to reconsider that decision. Section
 33.32 268.103 applies to a request for reconsideration. If a request for reconsideration is timely
 33.33 filed, the unemployment law judge must issue an order:

33.34 (1) a decision modifying the findings of fact and decision issued under subdivision
 33.35 1c;

34.1 (2) an order setting aside the decision issued under subdivision ~~† 1c~~ and directing
 34.2 that an additional ~~evidentiary~~ hearing be conducted ~~under subdivision †~~; or

34.3 (3) a decision affirming the findings of fact and decision issued under subdivision ~~† 1c~~.

34.4 (b) Upon a timely request for reconsideration having been filed, the ~~department~~
 34.5 chief unemployment law judge must send a notice, by mail or electronic transmission,
 34.6 to all ~~involved~~ parties that a request for reconsideration has been filed. The notice must
 34.7 inform the ~~involved~~ parties:

34.8 (1) that reconsideration is the procedure for the unemployment law judge to correct
 34.9 any factual or legal errors in the decision, as well as correct any procedural errors,
 34.10 including ordering an additional hearing when appropriate;

34.11 (2) of the opportunity to provide comment on the request for reconsideration, and
 34.12 the right under subdivision 5 to obtain a copy of any recorded testimony and exhibits
 34.13 offered or received into evidence at the evidentiary hearing;

34.14 ~~(2)~~ (3) that providing specific comments as to a perceived factual or legal error in the
 34.15 decision, or a perceived error in procedure during the evidentiary hearing, will assist the
 34.16 unemployment law judge in deciding the request for reconsideration;

34.17 ~~(3)~~ (4) of the right to obtain any comments and submissions provided by the any
 34.18 other ~~involved~~ party regarding the request for reconsideration; and

34.19 ~~(4)~~ (5) of the provisions of paragraph (c) regarding additional evidence.

34.20 This paragraph does not apply if paragraph (d) is applicable. Sending the notice does
 34.21 not mean the unemployment law judge has decided the request for reconsideration was
 34.22 timely filed.

34.23 (c) In deciding a request for reconsideration, the unemployment law judge must not,
 34.24 except for purposes of determining whether to order an additional ~~evidentiary~~ hearing,
 34.25 consider any evidence that was not submitted at the ~~evidentiary~~ hearing ~~conducted under~~
 34.26 ~~subdivision †~~. The unemployment law judge must order an additional ~~evidentiary~~ hearing if
 34.27 ~~an involved~~ a party shows that evidence which was not submitted at the ~~evidentiary~~ hearing:

34.28 (1) would likely change the outcome of the decision and there was good cause for
 34.29 not having previously submitted that evidence; or

34.30 (2) would show that the evidence that was submitted at the ~~evidentiary~~ hearing was
 34.31 likely false and that the likely false evidence had an effect on the outcome of the decision.

34.32 (d) If the ~~involved applicant or involved employer~~ party who filed the request for
 34.33 reconsideration failed to participate in the ~~evidentiary~~ hearing ~~conducted under subdivision~~
 34.34 ~~†~~, an order setting aside the decision and directing that an additional ~~evidentiary~~ hearing
 34.35 be conducted must be issued if the party who failed to participate had good cause for
 34.36 failing to do so. ~~In the notice that a request for reconsideration has been filed,~~ The party

35.1 who failed to participate in the hearing must be informed, in the notice that a request for
 35.2 reconsideration has been filed, of the requirement, ~~and provided the opportunity~~, to show
 35.3 good cause for failing to participate. If the unemployment law judge determines that good
 35.4 cause for failure to participate has not been shown, the ~~unemployment law~~ judge must
 35.5 ~~state~~ make that finding in the order decision issued under paragraph (a).

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

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

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

35.12 (e) A request for reconsideration must be decided by the unemployment law judge
 35.13 who issued the decision under subdivision ~~1~~ 1c unless that ~~unemployment law~~ judge:

35.14 (1) is no longer employed by the department;

35.15 (2) is on an extended or indefinite leave; or

35.16 ~~(3) has been disqualified from the proceedings on the judge's own motion; or~~

35.17 ~~(4)~~ (3) has been removed from the proceedings by the chief unemployment law judge.

35.18 (f) A request for reconsideration that is filed more than 20 calendar days after the
 35.19 sending of the decision under subdivision 1c must be dismissed by a decision as untimely.

35.20 ~~(f)~~ (g) The unemployment law judge must send to ~~any involved applicant or involved~~
 35.21 ~~employer~~ all parties, by mail or electronic transmission, the decision or order issued
 35.22 under this subdivision. ~~An order~~ A decision affirming or modifying the previously issued
 35.23 findings of fact and decision or an order affirming the previously issued findings of fact
 35.24 ~~and decision~~, or a decision dismissing the request for reconsideration as untimely, is the
 35.25 final department decision on the matter and is final and binding on the ~~involved applicant~~
 35.26 ~~and involved employer parties~~ unless judicial review is sought under subdivision 7.

35.27 Subd. 3. **Withdrawal of appeal and request for reconsideration.** (a) Any appeal
 35.28 or request for reconsideration that is pending before an unemployment law judge may be
 35.29 withdrawn by the appealing ~~person~~ party, or an authorized representative of that ~~person~~
 35.30 party, upon filing of a notice of withdrawal.

35.31 (b) The appeal or request for reconsideration must, by order, be dismissed if a notice
 35.32 of withdrawal is filed, unless an unemployment law judge directs that further ~~adjudication~~
 35.33 is proceedings are required for a proper result. The withdrawal of the appeal or request for
 35.34 reconsideration is, unless the unemployment law judge orders further proceedings, treated
 35.35 as if an appeal or request for reconsideration had not been filed.

35.36 (c) A notice of withdrawal may be filed by mail or ~~by~~ electronic transmission.

36.1 Subd. 3a. **Effect of decisions.** (a) If an unemployment law judge's decision ~~or order~~
 36.2 allows unemployment benefits to an applicant, the ~~unemployment~~ benefits must be paid
 36.3 regardless of any request for reconsideration or ~~any appeal~~ a petition to the Minnesota
 36.4 Court of Appeals having been filed.

36.5 (b) If an unemployment law judge's decision ~~or order~~ modifies or reverses a
 36.6 determination, or on reconsideration, the decision modifies or reverses a prior decision
 36.7 ~~of the unemployment law judge, allowing unemployment which allowed~~ benefits to an
 36.8 applicant, any benefits paid in accordance with the determination, or prior decision of the
 36.9 unemployment law judge, is are considered an overpayment of those unemployment
 36.10 benefits. A decision ~~or order~~ issued under this section that results in an overpayment of
 36.11 unemployment benefits must set out the amount of the overpayment and the requirement
 36.12 under section 268.18, subdivision 1, that the ~~overpaid unemployment~~ benefits must be
 36.13 repaid.

36.14 (c) If an unemployment law judge's ~~order~~ decision under subdivision 2 allows
 36.15 unemployment benefits to an applicant under section 268.095 because of a quit or
 36.16 discharge and the unemployment law judge's decision is reversed by the Minnesota Court
 36.17 of Appeals or the Supreme Court of Minnesota, the applicant cannot be held ineligible
 36.18 for any of the unemployment benefits paid the applicant and it is not considered an
 36.19 overpayment of those unemployment benefits under section 268.18, subdivision 1 prior to
 36.20 the date of the court's reversal. The effect of the court's reversal is:

36.21 (1) that the applicant may only be held ineligible for future unemployment benefits;
 36.22 and

36.23 (2) the application of section 268.047, subdivision 3, in computing the future tax
 36.24 rate of the a taxpaying employer.

36.25 (d) If an unemployment law judge, under subdivision 2, orders ~~the taking of an~~
 36.26 additional evidene hearing, the unemployment law judge's prior decision must continue
 36.27 to be enforced until new findings of fact and decision are made by the unemployment
 36.28 law judge.

36.29 Subd. 4. **Oaths; subpoenas and affirmations.** An unemployment law judge has
 36.30 authority to administer oaths and affirmations, ~~take depositions, and.~~ Before testifying in a
 36.31 hearing, every witness is required to declare to testify truthfully, by oath or affirmation.
 36.32 The form of oath or affirmation is in sections 358.07 and 358.08.

36.33 Subd. 4a. **Subpoenas.** (a) The unemployment law judge has authority to issue
 36.34 subpoenas to compel the attendance of witnesses and the production of documents and other
 36.35 personal property considered necessary as evidence in connection with the subject matter
 36.36 of an evidentiary a hearing. A party may request issuance of a subpoena by contacting the

37.1 chief unemployment law judge, by mail or electronic transmission, sufficiently in advance
 37.2 of the hearing to allow for service of the subpoena. A request must identify the subject
 37.3 matter and necessity of the evidence sought. The unemployment law judge must give full
 37.4 consideration to a request for a subpoena and must not unreasonably deny a request for a
 37.5 subpoena. If a subpoena request is initially denied, the unemployment law judge must, on
 37.6 the ~~unemployment law~~ judge's own motion, reconsider that request during the evidentiary
 37.7 hearing and rule on whether the request was properly denied. If the request was not
 37.8 properly denied, the evidentiary hearing must be continued for issuance of the subpoena.

37.9 (b) The subpoenas are enforceable through the district court in Ramsey County.

37.10 (c) Witnesses subpoenaed, other than an ~~involved applicant or involved employer~~ a
 37.11 party or officers and employees of an involved employer, must be paid by the department
 37.12 the same witness fees as in a civil action in district court.

37.13 Subd. 5. **Use of evidence; data privacy.** (a) ~~All testimony at any evidentiary~~
 37.14 ~~hearing conducted under subdivision 1 must be recorded.~~ A copy of any recorded
 37.15 testimony and exhibits offered or received into evidence at the hearing must, upon request,
 37.16 be furnished to a party at no cost:

37.17 (1) during the time period for filing a request for reconsideration ~~or~~;

37.18 (2) while a request for reconsideration is pending;

37.19 (b) ~~Regardless of any provision of law to the contrary, if recorded testimony and~~
 37.20 ~~exhibits received into evidence at the evidentiary hearing are not requested during the time~~
 37.21 ~~period for filing a request for reconsideration, while a request for reconsideration is pending,~~

37.22 (3) during the time for filing any appeal a petition under subdivision 7, ~~or during the~~
 37.23 ~~pendency thereof, that, or~~

37.24 (4) while a petition is pending.

37.25 Regardless of any law to the contrary, recorded testimony and other evidence may later
 37.26 be made available only under a district court order. A subpoena is not considered a
 37.27 district court order.

37.28 (e) (b) ~~Testimony obtained under subdivision 1, at a hearing may not be used~~
 37.29 ~~or considered for any purpose, including impeachment, in any civil, administrative, or~~
 37.30 ~~contractual proceeding, except by a local, state, or federal human rights agency with~~
 37.31 ~~enforcement powers, unless the proceeding is initiated by the department.~~ This paragraph
 37.32 does not apply to criminal proceedings.

37.33 Subd. 5a. **No collateral estoppel.** No findings of fact or decision or order issued by
 37.34 an unemployment law judge may be held conclusive or binding or used as evidence in
 37.35 any separate or subsequent action in any other forum, be it contractual, administrative, or
 37.36 judicial, except proceedings provided for under this chapter. This subdivision applies

38.1 regardless of whether the other action involves the same or related parties or involves
38.2 the same facts.

38.3 Subd. 6. **Representation; fees before an unemployment law judge.** (a) In any
38.4 proceeding under subdivision 1 or 2, ~~an applicant or involved employer~~ a party may
38.5 be represented by any agent. Except for an attorney-at-law, no person may charge an
38.6 applicant a fee of any kind for representing, assisting, or advising the applicant in a
38.7 hearing or on reconsideration.

38.8 (b) An unemployment law judge may refuse to allow any person to represent a party
38.9 in any proceeding before a judge if that person repeatedly fails to follow the instructions
38.10 of the judge or acts in an unethical manner.

38.11 Subd. 6a. **No fees.** (a) Except for services provided by an attorney-at-law, an
38.12 applicant may not be charged fees, costs, or disbursements of any kind in a proceeding
38.13 before an unemployment law judge, the Minnesota Court of Appeals, or the Supreme
38.14 Court of Minnesota.

38.15 (b) No attorney fees may be awarded against the department as a result of any
38.16 proceedings under this chapter.

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

38.23 (b) Any employer petitioning for a writ of certiorari must pay to the court the required
38.24 filing fee₂ and₂ upon the service of the writ₂ must furnish a cost bond to the department
38.25 in accordance with the Rules of Civil Appellate Procedure. If the employer requests a
38.26 written transcript of the testimony received at the ~~evidentiary hearing conducted under~~
38.27 ~~subdivision 1~~, the employer must pay the cost of preparing the transcript to the department
38.28 ~~the cost of preparing the transcript~~. That money is credited to the administration account.

38.29 (c) Upon issuance ~~by the Minnesota Court of Appeals~~ of a writ of certiorari as a result
38.30 of an applicant's petition, the department must furnish to the applicant at no cost a written
38.31 transcript of any testimony received at the ~~evidentiary hearing conducted under subdivision~~
38.32 ~~1~~, and, if requested, a copy of all exhibits entered into evidence. ~~No filing fee or cost bond is~~
38.33 ~~required of an applicant petitioning the Minnesota Court of Appeals for a writ of certiorari.~~

38.34 (d) The Minnesota Court of Appeals may affirm the decision of the unemployment
38.35 law judge or remand the case for further proceedings; or it may reverse or modify the

39.1 decision if the substantial rights of the petitioner may have been prejudiced because the
39.2 findings, inferences, conclusion, or decision are:

39.3 (1) in violation of constitutional provisions;

39.4 (2) in excess of the statutory authority or jurisdiction of the department;

39.5 (3) made upon unlawful procedure;

39.6 (4) affected by other error of law;

39.7 (5) unsupported by substantial evidence in view of the entire record as submitted; or

39.8 (6) arbitrary or capricious.

39.9 (e) The department is considered the primary responding party to any judicial action
39.10 involving an unemployment law judge's decision, because unemployment benefits are,
39.11 under section 268.069, subdivision 2, paid from state funds. The department may be
39.12 represented by an attorney licensed to practice law in Minnesota who is an employee
39.13 of the department.

39.14 Sec. 31. Minnesota Statutes 2012, section 268.131, subdivision 1, is amended to read:

39.15 Subdivision 1. **Cooperation with other states on combining wages.** (a) In
39.16 accordance with the requirements of United States Code, title 26, section 3304(a)(9)(B),
39.17 the Federal Unemployment Tax Act, the commissioner must participate in reciprocal
39.18 arrangements with other states for the payment of unemployment benefits on the basis
39.19 of combining an applicant's wages from multiple states for the purposes of collecting
39.20 unemployment benefits from a single state. The reciprocal agreement must include
39.21 provisions for applying the base period of a single state law to a benefit account involving
39.22 the combining of an applicant's wages and employment and avoiding the duplicate use of
39.23 wages by reason of such combining. The commissioner may not enter into any reciprocal
39.24 arrangement unless it contains provisions for reimbursements to the trust fund, by the
39.25 other state, for unemployment benefits paid from the trust fund to applicants based upon
39.26 wages and employment covered under the laws of the other state.

39.27 (b) The commissioner is authorized to pay unemployment benefits based upon
39.28 an applicant's wages paid in covered employment in another state only if the applicant
39.29 is combining Minnesota wage credits with the wages paid in covered employment from
39.30 another state or states.

39.31 (c) Section 268.23 does not apply to this subdivision.

39.32 (d) Section 268.07, subdivision 3b, paragraph (d), limiting an applicant to one
39.33 benefit account every 52 calendar weeks, includes combined wage benefit accounts
39.34 authorized under this section.

40.1 ~~(d)~~ (e) On any reciprocal arrangement, the wages paid an applicant from employment
 40.2 covered under an unemployment insurance program of another state are considered
 40.3 wages from covered employment for the purpose of determining the applicant's rights to
 40.4 unemployment benefits under the Minnesota Unemployment Insurance Law.

40.5 Sec. 32. **[268.133] UNEMPLOYMENT BENEFITS WHILE IN**
 40.6 **ENTREPRENEURIAL TRAINING.**

40.7 Unemployment benefits are available to dislocated workers participating in the
 40.8 converting layoffs into Minnesota businesses (CLIMB) program under section 116L.17,
 40.9 subdivision 11. Applicants participating in CLIMB are considered in reemployment
 40.10 assistance training under section 268.035, subdivision 21c. All requirements under section
 40.11 268.069, subdivision 1, must be met, except the commissioner may waive:

- 40.12 (1) the earnings deductible provisions in section 268.085, subdivision 5; and
 40.13 (2) the 32 hours of work limitation in section 268.085, subdivision 2, clause (6). A
 40.14 maximum of 500 applicants may receive a waiver at any given time.

40.15 Sec. 33. Minnesota Statutes 2012, section 268.18, subdivision 1, is amended to read:

40.16 Subdivision 1. **Nonfraud overpayment.** (a) Any applicant who (1) because of a
 40.17 determination or amended determination issued under section 268.07 or 268.101, or any
 40.18 other section of this chapter, or (2) because of an ~~appeal~~ unemployment law judge's decision
 40.19 ~~or order~~ under section 268.105, has received any unemployment benefits that the applicant
 40.20 was held not entitled to, must promptly repay the unemployment benefits to the trust fund.

40.21 (b) If the applicant fails to repay the unemployment benefits overpaid, the
 40.22 commissioner may offset the amount of the overpayment from any future unemployment
 40.23 benefits otherwise payable ~~the amount of the overpayment~~. Except when the overpayment
 40.24 resulted because the applicant failed to report deductible earnings or deductible or benefit
 40.25 delaying payments, no single offset may exceed 50 percent of the amount of the payment
 40.26 from which the offset is made. The overpayment may also be collected by the methods
 40.27 allowed under state and federal law.

40.28 (c) If an applicant has been overpaid unemployment benefits under the law of
 40.29 another state, because of a reason other than fraud, and that state certifies that the applicant
 40.30 is liable under its law to repay the unemployment benefits and requests the commissioner
 40.31 to recover the overpayment, the commissioner may offset from future unemployment
 40.32 benefits otherwise payable the amount of overpayment, except that no single offset may
 40.33 exceed 50 percent of the amount of the payment from which the offset is made.

41.1 Sec. 34. Minnesota Statutes 2012, section 268.18, subdivision 2b, is amended to read:

41.2 Subd. 2b. **Interest.** (a) On any unemployment benefits fraudulently obtained, and
41.3 any penalty amounts assessed under subdivision 2, the commissioner must assess interest
41.4 at the rate of ~~1-1/2~~ one percent per month on any amount that remains unpaid beginning
41.5 30 calendar days after the date of the determination of overpayment by fraud. Interest is
41.6 assessed in the same manner as employer debt under section 268.057, subdivision 5. A
41.7 determination of overpayment by fraud must state that interest will be assessed.

41.8 (b) If the determination did not state that interest will be assessed, interest is assessed
41.9 beginning 30 calendar days after notification, by mail or electronic transmission, to the
41.10 applicant that interest is now assessed.

41.11 (c) Interest payments under this section are credited to the trust fund.

41.12 Sec. 35. Minnesota Statutes 2012, section 268.184, subdivision 1a, is amended to read:

41.13 Subd. 1a. **Notification and misreporting penalties.** (a) If the commissioner finds
41.14 that any employer or agent of an employer failed to meet the notification requirements of
41.15 section 268.051, subdivision 4, the employer must be assessed a penalty of \$5,000 or two
41.16 percent of the first full quarterly payroll acquired, whichever is higher. Payroll is wages
41.17 paid as defined in section 268.035, subdivision 30. The penalty under this paragraph
41.18 must be canceled if the commissioner determines that the failure occurred because of
41.19 ignorance or inadvertence.

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

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

41.27 (d) Penalties under this subdivision are in addition to any other penalties and subject
41.28 to the same collection procedures that apply to past due amounts from an employer.
41.29 Penalties must be paid within 30 calendar days after sending of the determination of
41.30 penalty and credited to the trust fund.

41.31 (e) The determination of penalty is final unless the person assessed files an appeal
41.32 within 20 calendar days after sending of the determination of penalty by mail or electronic
41.33 transmission. Proceedings on the appeal are conducted in accordance with section 268.105.

42.1 Sec. 36. Minnesota Statutes 2012, section 268.186, is amended to read:

42.2 **268.186 RECORDS; AUDITS, RECORD KEEPING.**

42.3 Subdivision 1. Audits. ~~(a) Each employer must keep true and accurate records for~~
 42.4 ~~the periods of time and containing the information the commissioner may require by rule.~~
 42.5 For the purpose of administering this chapter, the commissioner has the power to audit,
 42.6 examine, or cause to be supplied or copied, any books, correspondence, papers, records,
 42.7 or memoranda that are relevant, ~~whether the books, correspondence, papers, records, or~~
 42.8 ~~memoranda~~ are the property of or in the possession of the an employer or any other person
 42.9 at any reasonable time and as often as may be necessary. Subpoenas may be issued under
 42.10 section 268.188, as are necessary, for an audit.

42.11 ~~(b) Any~~ An employer or other person that refuses to allow an audit of its records by
 42.12 the department, or that fails to make all necessary records available for audit in Minnesota
 42.13 upon request of the commissioner, may be assessed an administrative penalty of \$500.
 42.14 The penalty collected is credited to the trust fund.

42.15 (b) An employer or other person that fails to provide a weekly breakdown of money
 42.16 earned by an applicant upon request of the commissioner, information necessary for the
 42.17 detection of applicant fraud under section 268.18, subdivision 2, may be assessed an
 42.18 administrative penalty of \$100. Any notice requesting a weekly breakdown must clearly
 42.19 state that a \$100 penalty may be assessed for failure to provide the information. The
 42.20 penalty collected is credited to the trust fund.

42.21 ~~(c) The commissioner may make summaries, compilations, photographs,~~
 42.22 ~~duplications, or reproductions of any records, or reports that the commissioner considers~~
 42.23 ~~advisable for the preservation of the information contained therein. Any summaries,~~
 42.24 ~~compilations, photographs, duplications, or reproductions is admissible in any proceeding~~
 42.25 ~~under this chapter. The commissioner may duplicate records, reports, summaries,~~
 42.26 ~~compilations, instructions, determinations, or any other written or recorded matter~~
 42.27 ~~pertaining to the administration of this chapter.~~

42.28 ~~(d) Regardless of any law to the contrary, the commissioner may provide for the~~
 42.29 ~~destruction of any records, reports, or reproductions, or other papers that are no longer~~
 42.30 ~~necessary for the administration of this chapter, including any required audit. In addition,~~
 42.31 ~~the commissioner may provide for the destruction or disposition of any record, report,~~
 42.32 ~~or other paper from which the information has been electronically captured and stored,~~
 42.33 ~~or that has been photographed, duplicated, or reproduced.~~

42.34 Subd. 2. Record keeping. (a) Each person must establish, maintain, and preserve
 42.35 records on individuals performing services for the person as employees or as independent

43.1 contractors. The records must be preserved for a period of not less than four years after
 43.2 the calendar year in which the compensation for the services was paid or was payable.

43.3 (b) Each employer must maintain records on each employee, in covered and
 43.4 noncovered employment, showing the following:

43.5 (1) the employee's name and complete resident address;

43.6 (2) the employee's Social Security number;

43.7 (3) the days in which the employee performed services;

43.8 (4) the location where the employee performed services;

43.9 (5) the wages paid to the employee and wages due but not paid for services;

43.10 (6) the employee's rate of pay; and

43.11 (7) the amounts paid to the employee as allowances or reimbursement for travel

43.12 or other activity that were not included as wages. The records must show each item of

43.13 expense incurred during each pay period or calendar month.

43.14 (c) For each employee who performs services both in Minnesota and outside of
 43.15 Minnesota, the records required to be maintained, in addition to paragraph (b), include:

43.16 (1) a list of the states in which the employee performs services other than temporary
 43.17 or incidental services, and the dates services were performed in each state;

43.18 (2) the state in which the employer maintains a base of operations used by the
 43.19 employee; and

43.20 (3) the state from which the services are directed and controlled.

43.21 **Sec. 37. [268.187] DEPARTMENT RECORDS; DESTRUCTION.**

43.22 (a) The commissioner may make summaries, compilations, duplications, or
 43.23 reproductions of any records pertaining to this chapter that the commissioner considers
 43.24 advisable for the preservation of the information.

43.25 (b) Regardless of any law to the contrary, the commissioner may destroy any
 43.26 records that are no longer necessary for the administration of this chapter. In addition, the
 43.27 commissioner may destroy any record from which the information has been electronically
 43.28 captured and stored.

43.29 **Sec. 38. Minnesota Statutes 2012, section 268.192, subdivision 1a, is amended to read:**

43.30 **Subd. 1a. Agreements not allowed. (a) An employer may not make an agreement**
 43.31 **that in exchange for the employer agreeing not to contest the payment of unemployment**
 43.32 **benefits, including agreeing not to provide information to the department, an employee will:**

43.33 **(1) quit the employment;**

43.34 **(2) take a leave of absence;**

44.1 (3) leave the employment temporarily or permanently; or

44.2 (4) withdraw a grievance or appeal of a termination.

44.3 (b) Paragraph (a) does not apply if the parties to the agreement acknowledge in
 44.4 writing that they are aware of sections 268.069, subdivision 2, and 268.182, subdivision 2.

44.5 (c) An agreement that violates this subdivision has no effect under this chapter.

44.6 Sec. 39. Minnesota Statutes 2012, section 268.194, subdivision 1, is amended to read:

44.7 Subdivision 1. **Establishment.** There is established as a special state trust fund,
 44.8 separate and apart from all other public money or funds of this state, an unemployment
 44.9 insurance trust fund, that is administered by the commissioner exclusively for the payment
 44.10 of unemployment benefits. This trust fund consists of:

44.11 (1) all taxes collected;

44.12 (2) interest earned upon any money in the trust fund;

44.13 (3) reimbursements paid by nonprofit organizations and the state and political
 44.14 subdivisions;

44.15 (4) tax rate buydown payments under section 268.051, subdivision 7;

44.16 (5) any money received as a loan from the federal unemployment trust fund in
 44.17 accordance with United States Code, title 42, section 1321, of the Social Security Act;

44.18 (6) any ~~other~~ money received under a reciprocal unemployment benefit arrangement
 44.19 with the federal government or any other state;

44.20 (7) money recovered on overpaid unemployment benefits ~~except, if allowed by~~
 44.21 ~~federal law, five percent of any recovered amount is credited to the administration account;~~

44.22 (8) all money credited to the account under this chapter;

44.23 (9) all money credited to the account of Minnesota in the federal unemployment
 44.24 trust fund under United States Code, title 42, section 1103, of the Social Security Act,
 44.25 also known as the Reed Act; and

44.26 (10) all money received for the trust fund from any other source.

44.27 Sec. 40. Minnesota Statutes 2012, section 268.196, subdivision 1, is amended to read:

44.28 Subdivision 1. **Administration account.** (a) There is created in the state treasury a
 44.29 special account to be known as the administration account. All money that is deposited
 44.30 into this account is continuously available to the commissioner for expenditure to
 44.31 administer the Minnesota unemployment insurance program, and does not lapse at any
 44.32 time. The administration account consists of:

44.33 (1) all money received from the federal government to administer the Minnesota
 44.34 unemployment insurance program, or any federal unemployment insurance program, ~~or~~

45.1 assistance provided to any other state to administer that state's unemployment insurance
45.2 program;

45.3 ~~(2) five percent of any money recovered on overpaid unemployment benefits as~~
45.4 ~~provided for in section 268.194, subdivision 1, clause (7), which must be used for~~
45.5 ~~detering, detecting, and collecting overpaid unemployment benefits;~~

45.6 ~~(3) (2) any money received as compensation for services or facilities supplied to~~
45.7 ~~the federal government or any other state;~~

45.8 ~~(4) (3) any money credited to this account under this chapter;~~

45.9 ~~(5) (4) any amounts received for losses sustained by this account or by reason of~~
45.10 ~~damage to equipment or supplies; and~~

45.11 ~~(6) (5) any proceeds from the sale or disposition of any equipment or supplies that~~
45.12 ~~may no longer be necessary for the proper administration of those sections~~ the Minnesota
45.13 unemployment insurance program.

45.14 (b) All money in this account must be deposited, administered, and disbursed in the
45.15 same manner and under the same conditions and requirements as are provided by law for
45.16 the other special accounts in the state treasury. The commissioner of management and
45.17 budget, as treasurer and custodian of this account, is liable for the faithful performance
45.18 of duties in connection with this account.

45.19 (c) All money in this account must only be spent for the ~~purposes and in the amounts~~
45.20 ~~found necessary by the United States Secretary of Labor for the proper and efficient~~
45.21 ~~administration of the Minnesota unemployment insurance program.~~

45.22 Sec. 41. Minnesota Statutes 2012, section 268.215, is amended to read:

45.23 **268.215 DAY OF THE WEEK AND DATE REQUIREMENT.**

45.24 (a) Every determination issued under this chapter that is subject to an appeal to an
45.25 unemployment law judge must indicate the day of the week and the date, for example,
45.26 Tuesday, August 1, 2006, that the determination is final and no longer subject to an appeal.

45.27 (b) Every decision issued by an unemployment law judge under section 268.105,
45.28 subdivision ~~1~~ 1c, must indicate the day of the week and the date, for example, Tuesday,
45.29 August 1, 2006, that the decision is final and no longer subject to reconsideration.

45.30 Sec. 42. Laws 2012, chapter 201, article 1, section 3, the effective date, is amended to
45.31 read:

45.32 **EFFECTIVE DATE.** This section is effective July 1, 2012, except the amendments
45.33 to paragraph (d) are effective for penalties ~~imposed~~ credited on or after July 1, 2013.

46.1 **EFFECTIVE DATE.** This section is effective the day following final enactment.

46.2 Sec. 43. **REPEALER.**

46.3 Minnesota Rules, parts 3310.2905, subpart 2; 3310.2910; 3310.2914, subpart
46.4 1; 3310.2916; 3310.2919; 3310.2920; 3315.0200, subpart 1; 3315.0203; 3315.0211;
46.5 3315.0212; 3315.0213; 3315.0501, subparts 1 and 2; 3315.0555, subpart 1; 3315.0801;
46.6 3315.0805; 3315.0810; 3315.0815; 3315.0820; 3315.0825; 3315.0830; 3315.0835;
46.7 3315.0840; 3315.0845; 3315.0901; 3315.0905; 3315.1001; and 3315.1010, are repealed.

46.8 Sec. 44. **EFFECTIVE DATE.**

46.9 Unless otherwise specified, this article is effective July 1, 2013.

APPENDIX
Article locations in 13-0100

| | | |
|-----------|-------------------------------|--------------|
| ARTICLE 1 | FEDERAL CONFORMITY | Page.Ln 1.20 |
| ARTICLE 2 | HOUSEKEEPING AND POLICY | Page.Ln 6.5 |

3310.2905 NOTICE OF APPEAL.

Subp. 2. **Information.** The notice of appeal must also include the following information:

A. A statement that a hearing will be scheduled promptly, and that the parties should begin to prepare for the hearing.

B. A statement of the parties' right to represent themselves or to be represented by an attorney or other duly authorized representative.

C. A brief description of the procedure to be followed at the hearing.

D. A statement that the parties should bring to the hearing all documents, records, and witnesses they need to support their position.

E. A statement that a party may request the witnesses and documents that another party intends to bring to the hearing, and an explanation of the process for making the request.

F. A statement that subpoenas may be available to compel the attendance of witnesses or the production of documents, and an explanation of the process for requesting a subpoena.

G. A statement that documents contained in the department's records that will be introduced at the hearing as exhibits are available upon request, and an explanation of the process for making the request.

H. If a decision issued under Minnesota Statutes, section 268.105, subdivision 1, paragraph (c), could result in an applicant being overpaid unemployment benefits, the notice must contain the following statement:

"You have already received unemployment benefits on your benefit account. It is important for you to attend this hearing even if you are back to work and not receiving unemployment benefits now, because if you lose the appeal, you will not be able to receive further unemployment benefits and you will have to pay back all the unemployment benefits you have already received. These unemployment benefits are called overpaid unemployment benefits and they could be deducted from your state income tax refund, rent credit refund, or from a future benefit account."

3310.2910 NOTICE OF HEARING; CONSOLIDATION OF ISSUES.

The notice of hearing must be mailed to each party at the last known address at least ten days before the scheduled date of hearing unless notice is waived by the parties. The notice must state the time, date, and place of the hearing, the name of the unemployment law judge who will hear the case, the issues to be considered at the hearing, and must contain the information required by part 3310.2905, subpart 2, items B to H. If the issue to be considered at the hearing involves ineligibility for unemployment benefits because of a separation from employment, the notice must explain that the parties should be prepared to discuss all incidents that arose during the course of the employment that led to the separation. The parties must also be advised of their right to represent themselves or to be represented by an attorney or other duly authorized representative. Upon the motion of a party to a hearing or on the unemployment law judge's motion, the unemployment law judge may consolidate for hearing issues involving the same parties and may take testimony and render a decision on issues not listed on the notice of hearing if each party is so notified on the record at the hearing and does not object on the record.

3310.2914 SUBPOENAS AND DISCOVERY.

Subpart 1. **Subpoenas.** Subpoenas are available to a party to compel the attendance of witnesses, the production of documents or other exhibits upon a showing of necessity by the party applying for subpoenas. Subpoenas may be obtained by calling or writing the appeals office sufficiently in advance of the scheduled hearing to allow for the service of the subpoenas. The requesting party must identify the person or documents to be subpoenaed, the subject matter of the evidence requested, and their necessity. A request for a subpoena may be denied if the testimony or documents sought would be irrelevant, immaterial, or unduly cumulative or repetitious. A request for a subpoena may be renewed when a party finds an additional basis or need for evidence.

A party whose request for a subpoena has been denied may request at the time of the hearing that the unemployment law judge who conducts the hearing issue the subpoena. If the unemployment law judge grants the request for a subpoena, the unemployment law judge may adjourn the hearing to allow a sufficient time for service of and compliance with the subpoena.

3310.2916 REPRESENTATION BEFORE UNEMPLOYMENT LAW JUDGE.

APPENDIX
Repealed Minnesota Rule: 13-0100

Any individual may personally appear in any proceeding before an unemployment law judge and may be represented by an attorney or a duly authorized representative. Any partnership may be represented by any of its members, an attorney, or other duly authorized representative. Any corporation or association may be represented by an officer, an attorney, or other duly authorized representative.

An unemployment law judge may refuse to allow any person to represent others in any proceeding before an unemployment law judge if that person is unethical in conduct or intentionally and repeatedly fails to observe the provisions of the law or rules relative to the proceedings or the instructions of the unemployment law judge.

3310.2919 DATA PRACTICES NOTICE.

At the beginning of each hearing, an unemployment law judge must advise the parties in the following or a similar manner of the data practices implications of the hearing:

"The purpose of this hearing is to take testimony and evidence. This information will be used to decide your rights under Minnesota law. Certain other government officials may have access to information provided at this hearing if this is allowed by statute or the information may be disclosed pursuant to a valid court order."

3310.2920 ADMINISTRATION OF OATH OR AFFIRMATION.

Before testifying, every witness is required to declare to testify truthfully, by oath or affirmation. The mode of administering an oath is as practiced in this state. The form of the oath or affirmation is as set forth in Minnesota Statutes, sections 358.07 and 358.08.

3315.0200 PURPOSE.

Subpart 1. **Scope.** Parts 3315.0200 to 3315.0213 further define "wages" as defined in Minnesota Statutes, section 268.035, subdivision 29, and used in Minnesota Statutes, sections 268.03 to 268.23; this chapter; interpretations; forms; and other official pronouncements issued by the department.

3315.0203 WAGES PAYABLE, CORPORATE OFFICERS.

If a corporation does not have a regularly scheduled pay date for its officers or have reference to one in the corporate minutes, the wages of its corporate officers are considered due when paid. If the corporate minutes specify an amount to be paid each period, such as a week, month, or year, without specifying an exact pay date, the wages for a period are considered due no later than the end of the period.

3315.0211 TIPS AND GRATUITIES AS WAGES.

Subpart 1. **Accounted for to the employer.** Tips and gratuities are accounted for to the employer in various manners or forms including when they are:

- A. added to the customer's bill by the employer;
- B. added to the bill by a customer using credit for the purchase;
- C. disbursed by the employer from a tip pool; or
- D. reported to the employer in compliance with the Internal Revenue Code of 1986.

Subp. 2. **Paid to an employee by a customer.** Tips and gratuities are considered paid to an employee by a customer if they are:

- A. received directly from the customer;
- B. distributed from a tip pool, whether controlled by the employer or employees; or
- C. received as part of a plan or system under which the person initially receiving them, whether directly from the customer or from a tip pool, distributes a portion of the tips to other employees.

Under items A to C the tips are considered as being paid by the customer to the person ultimately receiving them.

3315.0212 EMPLOYEE EQUIPMENT AND VEHICLES.

Subpart 1. **Trucks, bulldozers, tractors.** The compensation of the operator and supplier of a bulldozer, tractor, or similar equipment, and trucks other than truck owner-operators excluded under Minnesota Statutes, section 268.035, subdivision 25b, whose compensation includes wages for personal services as well as the cost of operating and hiring the equipment are wages unless

APPENDIX
Repealed Minnesota Rule: 13-0100

the amount attributable to wages is separately identified either by making separate payments; or, if both wages and equipment hire are combined in a single payment, by a prearranged written agreement or by specifically indicating the separate amounts at the time of each payment.

Subp. 2. **Advances or reimbursements as wages.** Payments to an employee that include advances or reimbursements for use of a personal vehicle of up to 9,000 pounds gross vehicle weight in the employer's business are wages unless the amount attributable to the use of the vehicle is separately paid or stated as prescribed in Minnesota Statutes, section 268.035, subdivision 29, paragraph (a), clause (10), and the advance or reimbursement is not unreasonable or arbitrary in which case only the amount attributable to services performed is wages.

Subp. 3. **Commissioner determination of wages.** If the commissioner finds that the wage determination of the equipment operators or employees who use their personal vehicles in the employer's business prescribed by subparts 1 and 2 would be unreasonable or arbitrary in a particular case, then the commissioner must determine the amount of the wages of the employee involved.

3315.0213 NONCASH WAGES.

Except as may otherwise be provided in this chapter, the cash value of wages payable in any medium other than cash is:

A. the fair market value of meals or any value agreed upon between the employer and employee if it is not less than the allowance as provided in Minnesota Statutes, sections 177.21 to 177.35, the Minnesota Fair Labor Standards Act, and rules promulgated thereunder;

B. the value of rent of a house, apartment, or other lodging, furnished to an employee that would be paid by an employee for similar or equivalent accommodations, but in no event less than the allowance provided in Minnesota Statutes, sections 177.21 to 177.35 and rules promulgated thereunder; or

C. the fair market value, determined when received, of any other payment for services unless a higher value is agreed upon between the employer and the employee.

If the commissioner determines that the reasonable fair market value is other than as determined by the employer the commissioner must, after affording the employer reasonable opportunity for the submission of relevant information, determine the reasonable cash value of board, rent, housing, meals, or similar advantage.

3315.0501 DEFINITIONS.

Subpart 1. **Scope.** For the purpose of parts 3315.0501 to 3315.0555 the following terms have the meaning given to them.

3315.0501 DEFINITIONS.

Subp. 2. **Control.** "Control" is the power to instruct, direct, or regulate the activities of an individual whether or not the power is exercised.

3315.0555 DETERMINING WORKER STATUS.

Subpart 1. **Essential factors.** When determining whether an individual is an employee or an independent contractor, five essential factors must be considered and weighed within a particular set of circumstances. Of the five essential factors to be considered, the two most important are those:

A. that indicate the right or the lack of the right to control the means and manner of performance; and

B. to discharge the worker without incurring liability. Other essential factors to be considered and weighed within the overall relationship are the mode of payment; furnishing of materials and tools; and control over the premises where the services are performed.

Other factors, including some not specifically identified in this part, may be considered if a determination is inconclusive when applying the essential factors, and the degree of their importance may vary depending upon the occupation or work situation being considered and why the factor is present in the particular situation.

3315.0801 PURPOSE.

Parts 3315.0801 to 3315.0845 further define and clarify terms used in Minnesota Statutes, section 268.035, subdivisions 2, 11, and 20, clause (34), and in parts 3315.0801 to 3315.0845.

3315.0805 DEFINITIONS.

Subpart 1. **Agricultural and horticultural commodity.** "Agricultural or horticultural commodity" includes nuts, fruits, mushrooms, vegetables, honey, milk, eggs and grain, flowers, cut flowers, trees, sod and shrubbery, animal feed or bedding, grass seed, vegetable and cereal seed, flax, soy beans, sunflower seeds, corn, medicinal herbs, and other crops.

Subp. 2. **Commodity.** "Commodity" refers to a single product. For example, all apples are one commodity. Apples and peaches are two separate commodities.

Subp. 3. **Crop purchase agreement.** "Crop purchase agreement" means an agreement whereby a crop is raised under contract with a buyer.

Subp. 4. **Cultivating.** "Cultivating" means cultivating of the soil, irrigating crops, spraying, dusting, and other related operations.

Subp. 5. **Farm.** "Farm," unless otherwise excluded in part 3315.0820, means land or buildings if their primary use is for raising agricultural or horticultural commodities or for activities generally associated with the operation of a ranch, range, livestock, or dairy operation. A farm need not be a specific size and it need not be composed of contiguous plots. The performance of agricultural services does not by itself render the place where they are performed a farm.

Subp. 6. **Fur-bearing animals.** "Fur-bearing animals" are animals raised for the eventual use of their fur in the manufacture of clothing or other products.

Subp. 7. **Harvesting.** "Harvesting" includes baling hay and straw, shredding fodder, combining small grains, hulling nuts, and course grinding of alfalfa. Horticultural commodities including flowers, trees, shrubbery, and plants are harvested when they are taken up for sale or storage.

Subp. 8. **Livestock.** "Livestock" is any useful domestic animal kept for use on a farm or raised for sale and profit or for eventual consumption.

Subp. 9. **Poultry.** "Poultry" is any domestic fowl raised for meat or eggs and includes chickens, turkeys, ducks, and geese.

Subp. 10. **Primary.** "Primary" means 70 percent or more.

Subp. 11. **Raising.** "Raising" as it pertains to livestock, bees, poultry, fur-bearing animals, and wildlife means any or all stages of development, including breeding, which are necessary in their maturing for use on the farm or for sale. Raising does not include services in potting, watering, heeling, or otherwise caring for trees, shrubbery, plants, flowers, or similar items that are purchased in salable condition for the purpose of resale.

Subp. 12. **Terminal market.** A "terminal market" includes a packing or processing plant or any place where a farmer-producer customarily relinquishes economic interest in the commodity, its future form, or its destiny.

Subp. 13. **Wildlife.** "Wildlife" refers to frogs, birds, fish, and all animals belonging to a species or class generally considered wild regardless of the element which they inhabit.

3315.0810 UNMANUFACTURED STATE.

Minnesota Statutes, section 268.035, subdivision 2, requires that the services described in that subdivision be in connection with commodities that are in their unmanufactured state. A commodity that loses its original identity is considered in a manufactured state and services relating to the manufactured product are not agricultural. The following products are considered as being in a manufactured state: cheese; butter; yogurt; ice cream; dried or powdered milk; dried fruits or vegetables; juices, oils, and syrups derived from fruits and vegetables; and dried or powdered eggs.

3315.0815 FARMS, INCLUSIONS.

Subpart 1. **Wild rice.** Land developed for seeding, cultivating, and raising wild rice is a farm.

Subp. 2. **Christmas trees.** A plot of land used primarily for raising Christmas trees is a farm.

Subp. 3. **Mushrooms.** Land and structures used primarily for raising mushrooms is a farm.

Subp. 4. **Wildlife.** A parcel of real property used for raising any form of wildlife is a farm.

Subp. 5. **Ranges.** Land used primarily for grazing is a farm.

3315.0820 FARMS, EXCLUSIONS.

APPENDIX
Repealed Minnesota Rule: 13-0100

Subpart 1. **Feedlots, hatcheries, and horse training and breeding.** Feedlots, hatcheries, and horse training and breeding enterprises are not in themselves farms although they require services generally considered to be agricultural labor.

Subp. 2. **Wildland.** Property left in its wild state with no effort expended to perform common farming operations is not a farm.

3315.0825 AGRICULTURAL LABOR ON FARMS.

Services connected with the following activities must be performed on a farm as defined in Minnesota Statutes, section 268.035, subdivision 2, and in parts 3315.0801 to 3315.0845, to be agricultural labor:

- A. breeding and training horses;
- B. hatching poultry;
- C. aerial seeding, fertilizing, spraying, and dusting including services related to the mixing of the spray or dust material or the loading of the material into the airplane, as well as services related to the measuring of the swaths and the marking and flagging of fields to be dusted or sprayed;
- D. clerical, bookkeeping, and other office work in conjunction with the services referred to in Minnesota Statutes, section 268.035, subdivisions 2 and 11; or
- E. holding, feeding, and fattening livestock in feed lots.

3315.0830 AGRICULTURAL LABOR, CONDITIONAL SITUATIONS.

Subpart 1. **Generally.** The services described in subparts 2 to 5 are not agricultural labor unless they meet the specific requirements set forth in subparts 2 to 5 with regard to where and for whom they are performed. When reference is made to "incidental to ordinary farming operations," that means services of the character ordinarily performed by employees of a farmer or of a farmer's cooperative organization or group as a prerequisite to marketing in its unmanufactured state any agricultural or horticultural commodity produced by the farmer, organization, or group.

Subp. 2. **Clerical work.** Record keeping and other clerical or office work performed in connection with the functions described in Minnesota Statutes, section 268.035, subdivisions 2 and 11, unless they are:

- A. performed in the employ of the owner or tenant or other operator of a farm;
- B. rendered in major part on a farm; and
- C. performed incidentally to ordinary farming operations.

Subp. 3. **Commodity retailing.** Retailing agricultural or horticultural commodities, on or off the farm, unless:

- A. the services are performed for, and the commodities are produced by the operator of the farm; and
- B. less than 50 percent of the employee's time is devoted to the services. The 50 percent test is to be applied to each employee with respect to either a pay period or 31 days, whichever is less.

Subp. 4. **Waterways work.** Services in the construction of canals, reservoirs, waterways, or drainage ditches, unless in the employ of the owner or tenant or other operator of a farm.

Subp. 5. **Land clearance.** Services in the clearing of stumps, brush, and debris from land in preparation for its use as a farm, unless done in the employ of the owner tenant or other operator of the farm.

3315.0835 AGRICULTURAL LABOR EXCLUSIONS.

Subpart 1. **Generally.** Services connected with the following activities do not constitute agricultural labor:

- A. breeding, raising, and caring for mice, rats, and other rodents and creatures commonly held for sale in pet shops or raised for research and experimental purposes;
- B. breeding, raising, caring for, exhibiting, and boarding dogs and cats;
- C. racing, exhibiting, and boarding horses, including services connected with a riding stable or academy;
- D. lumbering or landscaping;
- E. collecting and processing maple sap into maple syrup or sugar;
- F. trapping animals;

APPENDIX
Repealed Minnesota Rule: 13-0100

G. harvesting native wild rice not grown on land developed specifically for that purpose;
or

H. raising and harvesting worms.

Subp. 2. **Packing plants.** Services performed in the employ of any person other than the operator of a farm in hauling crops to a packing plant and services within the plant do not constitute agricultural labor.

3315.0840 AGRICULTURAL LABOR, SEPARATE COMMODITIES.

The services with respect to each commodity are to be considered separately in determining whether the conditions set forth in Minnesota Statutes, section 268.035, subdivisions 2 and 11, have been satisfied.

3315.0845 CROP PURCHASE AGREEMENTS.

Subpart 1. **Farm operator.** A person agreeing to purchase a commodity grown under a crop purchase agreement does not by that reason qualify as an operator of a farm even though the person conducts some or all of the operations necessary for the production and harvesting of the crops purchased.

Subp. 2. **Agricultural labor.** Services performed on a farm in the employ of either party to a crop purchase agreement in connection with the raising and harvesting of crops is agricultural labor.

3315.0901 PURPOSE.

Parts 3315.0901 and 3315.0905 further define and clarify terms used in Minnesota Statutes, section 268.035, subdivision 20, clause (18), and in parts 3315.0901 and 3315.0905.

3315.0905 DEFINITIONS.

Subpart 1. **Domestic service.** "Domestic service" means work ordinarily performed as an integral part of household duties that contribute to the maintenance of the employer's private home or administers to the personal wants and comforts of the employer and other members of the employer's household. In general "domestic service" includes work performed by cooks, table servers, butlers, housekeepers, house servants, security guards, cleaners, companions, child care providers and teachers employed in the household, valets, babysitters, launderers, furnace workers, caretakers, gardeners, grooms, sewing workers, odd-job workers, and chauffeurs of family automobiles. Domestic service performed for fraternities and sororities also includes services performed by houseparents.

Subp. 2. **Local college club.** "Local college club" means a club operated and controlled by and for the benefit of students enrolled at a university or college.

Subp. 3. **Private home.** "Private home" means the fixed abode of one or more persons. Any shelter used as a dwelling may be considered as a private home including a tent, boat, trailer, or a room or suite in a hospital, hotel, sanatorium, or nursing home. A cooperative boarding and lodging facility may also be a private home. In an apartment house, each apartment, together with its stairways, halls, and porches is a private home. Parts of the premises devoted to common use, such as an office, furnace room, lawns, public stairways, halls, and porches, are not a part of the private home. If a facility is used mainly as a commercial rooming or boarding house only that part of the house which is used as the operator's living quarters is considered to be a private home.

3315.1001 SCOPE.

Parts 3315.1001 and 3315.1010 clarify an employer's duty with regard to records and reports as required under Minnesota Statutes, chapter 268.

3315.1010 RECORDS.

Subpart 1. **Record keeping.** Each employer must establish, maintain, and preserve records with respect to individuals performing personal services for it, including individuals who perform or assist in performing the work of any employee of the employer if the employer had actual or constructive knowledge that the work was being performed. The records must be preserved for a period of not less than eight years after the calendar year in which the compensation for the services was paid or payable, and must show for each individual the following:

- A. name;
- B. Social Security number;

APPENDIX
Repealed Minnesota Rule: 13-0100

- C. days in which the individual performed personal services;
- D. location where services were performed;
- E. wages paid and wages due but not paid for personal services, showing separately:
 - (1) money wages, excluding special payments;
 - (2) wages paid and wages due but not paid, in any medium other than money, excluding special payments;
 - (3) special payments such as bonuses, gifts, and prizes, showing separately money payments, other special payments, and the character of the payments; and
 - (4) tips and gratuities paid to an employee by a customer and accounted for by the employee to the employer as defined in part 3315.0211, subparts 1 and 2;
- F. rate and base unit of pay;
- G. amounts paid as allowances or reimbursement for travel or other activity pertaining to the furtherance of the employer's business which were not included as wages. The account must show each item of expense incurred during each pay period or calendar month;
- H. the date of separation and the reason, in detail, for the termination;
- I. the complete resident address of the employee;
- J. for each pay period:
 - (1) the beginning and ending dates of the period;
 - (2) the total amount of wages paid and wages due but not paid for personal services performed; and
 - (3) the date of payment; and
- K. for each calendar month or, if less, the established pay period of the employer, the hours spent performing services in employment and the hours spent performing noncovered employment, by each employee for which the provisions of Minnesota Statutes, section 268.035, subdivision 15, paragraph (a), clause (5), apply.

Subp. 2. **Instate and outstate.** For services performed within and without Minnesota the records required by subpart 1 must include:

- A. the city or county and state in which the employer maintains a base of operations, as defined in Minnesota Statutes, section 268.035, subdivision 12, clause (1), used by the individual;
- B. the city or county and state from which the services are directed and controlled, if the employer does not have a base of operations in the states in which an individual performs services; and
- C. a list of the states in which the individual performs other than temporary or incidental services and the dates services were performed at each location.

Subp. 3. **Covered and uncovered employment.** For services performed in both employment and noncovered employment within a pay period the records required by subpart 1 must include the hours spent performing services in employment and the hours spent performing noncovered employment.