

CHAPTER 3305
DEPARTMENT OF JOBS AND TRAINING
UNEMPLOYMENT BENEFITS

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3305.0100 DEFINITIONS.

Subpart 1. **Scope.** For the purpose of chapters 3305 and 3315 the following terms have the meanings given them.

Subp. 2. **Commissioner.** "Commissioner" means the commissioner of the Department of Jobs and Training or his duly authorized representative.

Subp. 3. **Department.** "Department" means the Minnesota Department of Jobs and Training.

Subp. 4. **Unemployment office.** "Unemployment office" means a location where the department offers unemployment insurance claim services.

Statutory Authority: *MS s 268.021*

History: *1Sp1985 c 14 art 9 s 75*

PAYMENT OF BENEFITS

3305.0200 APPLICABILITY.

Parts 3305.0200 to 3305.1200 apply to determinations of a claimant's eligibility for regular benefits as defined in Minnesota Statutes, section 268.071, subdivision 1, clause (7) and to extended benefits pursuant to Minnesota Statutes, section 268.071, subdivisions 1 to 6.

Statutory Authority: *MS s 268.021*

3305.0300 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 3305.0200 to 3305.1200 the following terms have the meanings given them.

Subp. 2. **Credit week.** "Credit week" means any week within the base period for which wages in the required amount have been paid or were due and payable but not paid for performing services or for vacation periods. Except for vacation payments, those payments which are wages as defined in Minnesota Statutes, section 268.04, subdivision 25 or department rules but for which the individual performs no services within the calendar week shall not be used to establish a credit week.

Subp. 3. **Labor market area.** "Labor market area" means the geographic area in which the claimant can reasonably be expected to seek and find employment. In determining the labor market area, the commuting patterns of persons with the same or similar occupations residing in the claimant's locality shall be considered.

Subp. 4. **Seasonal worker.** "Seasonal worker" means a claimant whose employer customarily suspends or significantly curtails operations for regularly recurring periods or whose usual occupation cannot be performed for any employer in the labor market area because climatic conditions prohibit performance of the normal duties of the occupation.

Statutory Authority: *MS s 268.021*

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3305.0400 ABLE TO WORK.

Subpart 1. **Generally.** To be able to work a claimant must have the physical and mental ability to perform the usual duties of his customary occupation or the usual duties of other work for which he is fitted by training, experience, or capability and which is gainful employment engaged in by others as a means of livelihood. The burden of establishing ability to work is on the claimant, but there will be no presumption that a claimant is not able to work.

Subp. 2. **Particular situations.** In determining whether a claimant is able to work the department will consider the facts and circumstances of the claimant's particular situation. The determination shall be made by applying the criteria listed in items A and B:

A. Where doubt exists as to the claimant's ability to work the department shall require him to furnish medical evidence of his ability to work. Failure of the claimant to furnish requested medical evidence shall result in a suspension or a denial of benefits.

B. Normally a claimant is required to be able to work and available for full-time work for all shifts which are customary for his occupation. However, a claimant whose physical or mental condition restricts his availability to part-time work or to a particular shift shall be deemed able to work if there are jobs in his labor market area consistent with the limitations or such jobs can be expected to arise within a reasonable period of time.

Statutory Authority: *MS s 268.021*

3305.0500 AVAILABLE FOR WORK.

Subpart 1. **Generally.** Except as provided in part 3305.0400, subpart 2, item B, a claimant is considered available for work only if he is ready and willing to accept full-time suitable work. There must be no restrictions, either self-imposed or created by circumstances, which prevent accepting full-time work. A restriction does not prevent accepting full-time work if there are favorable prospects for obtaining full-time work within the restrictions within a reasonable period of time.

Subp. 2. **Absence from labor market area.** A claimant who is absent from his labor market area for personal reasons is presumed to be not available for work. This presumption is rebuttable.

Subp. 3. **Alien status.** A claimant who is an alien must present proof that he is authorized under federal law to work in the United States to be available for work.

Subp. 4. **Change of residence.** A claimant who moves to an area where his chances of securing work are materially lessened shall expand his work search, expand his availability to other occupations, and accept the prevailing wages, hours, and other conditions of work available in the labor market to which he moves.

Subp. 5. **Claimant cannot be contacted.** Unless good cause exists for the failure to be reachable by the department, a claimant who cannot be reached after reasonable efforts by the department for referral to possible employment is not available for work.

Subp. 6. **Failure to report.** A claimant who fails without good cause to report as directed to a job service office of the Department of Jobs and Training is not available for work. The department may presume that a claimant who fails without good cause to report as directed to an unemployment office to discuss his eligibility for benefits is not available for the days that he fails to report. A claimant who fails to report as directed to an unemployment office to discuss his eligibility for benefits for a prior period will be determined eligible or ineligible for the prior period based solely on the facts available to the office if the claimant has made no effort within 14 days to report to the office to establish eligibility.

Subp. 7. **Incarcerated.** A claimant who is incarcerated and who is unable to accept employment under a work release program is not available for work.

Subp. 8. **Labor market area.** A claimant must offer his services unequivocally to the labor market area to be available for work.

Subp. 9. **Length of unemployment.** As a claimant's duration of unemployment lengthens, prospects for obtaining employment in the customary occupation or other work in a reasonable time may change. Therefore, work that is unsuitable at one point in time may become suitable at another point. To be available for work, a claimant must be ready and willing to accept different work which becomes suitable as his prospects for customary work change. Thus, he may be required to broaden the geographic area in which he will accept work, seek and accept employment on a different shift, accept counseling for possible retraining or change in occupation, or seek and accept employment and the prevailing wages in a new occupation.

Subp. 10. **Seasonal worker.** A seasonal worker who is not willing to accept suitable work in other occupations during the off season is not available for work.

Subp. 11. **Self-employment.** A claimant is not available for work if he is self-employed and no longer seeking other suitable work or if he is planning to become self-employed and will not accept other suitable work.

Subp. 12. **Time or shift restriction.** Except as provided in part 3305.0400, subpart 2, item B, a claimant who imposes restrictions on the hours of the day or days of the week which he is willing to work which are not normal for his usual occupation or other suitable work is not available for work. A claimant who imposes restrictions on the hours of the day or days of the week which he is willing to seek work which prevent him from meeting the work search requirements of the department is not available for work.

Subp. 13. **Transportation.** A claimant to be available for work must have transportation from his residence to his labor market area.

Subp. 14. **Union membership.** A claimant who is seeking work only through his union is not available for work unless he is in an occupation or trade where it is customary that substantially all the hiring in that locality is done through his union. He must submit evidence, when required by the department, that he is a union member in good standing, is registered with the union for work, and is in compliance with other union rules.

Subp. 15. **Wage restriction.** A claimant who has demanded wages exceeding those customary in his labor market area for the type of work he is seeking is not available for work.

Statutory Authority: *MS s 268.021*

History: *1Sp1985 c 14 art 9 s 75*

3305.0600 ACTIVELY SEEKING WORK.

Subpart 1. **Generally.** A claimant must make reasonable, diligent efforts to actively seek suitable work for each week for which he files a claim. Reasonable, diligent efforts are those that a person in similar circumstances would make if genuinely interested in obtaining suitable employment under the existing conditions in the labor market area. A claimant who fails to make reasonable, diligent efforts to actively seek suitable work or who limits the search to positions that are not available or are above his training, experience, and qualifications is not actively seeking suitable work.

Subp. 2. **Scope of work search.** A claimant is not actively seeking work if he has not sought suitable work in accordance with specific and reasonable instructions of the department. The claimant may be required to do any or all of the following to establish that he is actively seeking suitable work:

A. register with the department's job service and report to the department's job service office when such reports are a required part of an active work search and may improve his opportunities of finding work;

B. register with his union hiring or placement facility and meet the union requirements concerning dispatch to a job;

C. register with a placement facility of his professional organization;

D. register with a placement facility of a school, college, or university;

E. apply for employment with former employers; however, claimants may refuse to reapply for work with employers if the claimant previously terminated employment with the same employer with a good cause attributable to the employer and the conditions constituting good cause for the prior quit continue to exist and will affect the claimant upon reemployment;

F. make application with employers who may reasonably be expected to have suitable openings;

G. make applications or take examinations for suitable openings in the civil service of a governmental unit;

H. respond to want ads for suitable work; or

I. perform any other reasonable action which the department finds to constitute an effective means of seeking work suitable to the claimant.

Subp. 3. Number of contacts. The number of employer contacts required to be considered actively seeking employment varies. In determining adequacy of work search in terms of the number of contacts required the department will consider the employment opportunities as well as the qualifications of the claimant and normal practices and methods of seeking work.

Subp. 4. Type of work sought. A claimant will be allowed to limit his work search to work in his usual or customary trade or occupation if he has favorable prospects of returning to work in his usual trade or occupation within a reasonable period of time under part 3305.0800, subpart 10. The length of time allowed to a claimant to limit his work search to work in his usual trade or occupation will be governed by the availability of that work in the labor market area where he is seeking work. When the claimant does not have favorable prospects, he shall be available for other suitable work under guidelines in part 3305.0700, subpart 5.

Subp. 5. Permanent and temporary work. Except as provided in part 3305.0700, subpart 3, claimants are required to actively seek suitable permanent work.

Subp. 6. Seasonal workers. A claimant who is seasonally unemployed is not relieved of the responsibility to actively seek work.

Subp. 7. Incarcerated worker. A claimant who is incarcerated and who is unable to seek work is not actively seeking work.

Subp. 8. Filing and reporting only. If due to economic conditions within the labor market area the department finds that for a particular occupation or class of claimants the existence of suitable job openings other than those listed with a union hiring hall, professional organization or similar placement facility, or the department are so few that any effort to search for openings would be fruitless to the claimant and burdensome to employers, then registering with and maintaining the requirements for referral by the hiring hall or placement facility or the department shall constitute an active search for employment.

Statutory Authority: *MS s 268.021*

3305.0700 SUITABLE WORK.

Subpart 1. Applicability. Parts 3305.0700 to 3305.0900 shall be used in determining if an individual is disqualified from receiving regular benefits by failing to apply for or accept suitable work or suitable reemployment without good cause.

Subp. 2. Policy. The suitable work provisions of Minnesota Statutes, sections 268.03 to 268.24 and parts 3305.0700 to 3305.0900 shall be administered so as

to promote the department's dual responsibilities of ensuring that benefits are paid to only those persons who are involuntarily unemployed through no fault of their own and, as promptly as possible, matching workers with jobs which best utilize their skills, knowledges, and abilities. Toward this end, "suitable work" is to be interpreted to recognize a worker's skills and abilities but not to provide a haven for those who do not wish to work.

Ideally, the department could match job seekers with jobs in their usual occupation with wages, hours, and other conditions of work identical to those previously enjoyed. As a practical matter economic conditions may prohibit this ideal and so a reasonable alternative must be developed. Any reasonable alternative should be based on the policy that it is best for employers, workers, and society as a whole to maximize use of existing skills and abilities for the largest number of workers possible under the existing economic conditions, temporary or permanent, of the labor market area.

Subp. 3. Suitable work. In general, "suitable work" is available work in the claimant's labor market area which is reasonably related to a claimant's qualifications. In determining whether a particular job is suitable, the department shall consider the degree of risk involved to the claimant's health, safety, and morals; the claimant's physical fitness; the claimant's prior training and experience; the claimant's length of unemployment and prospects of securing local work in his customary occupation; and the distance of the work from the claimant's residence.

Subp. 4. Unsuitable work. Work is not suitable under any of the following conditions:

A. if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

B. if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

C. if, as a condition of being employed, the individual would be required to join a union or to resign from or refrain from joining any bona fide labor organization; or

D. if the individual is in training with the approval of the commissioner.

Subp. 5. General. In determining what is suitable work, the department shall give primary consideration to the temporary or permanent nature of the claimant's separation from employment and whether he has favorable prospects of finding work in his usual or customary occupation within a reasonable period of time. Parts 3305.0800 and 3305.0900 shall also be considered in light of the following general guidelines:

A. For persons who have a verifiable assurance of work within six weeks, suitable work is limited to available, temporary work in their usual trade or occupation or substantially equivalent employment in the labor market area.

B. For persons with a verifiable assurance of work in more than six weeks, suitable work includes available, temporary work under item A or other temporary work in a related trade or occupation for which the claimant is suited by virtue of his education, training, work experience, or ability.

C. For seasonal workers suitable work includes temporary work under item B. Other employment is suitable if it meets the following conditions: there are available openings in a lower skilled or paid occupation; and the work pays a wage equaling at least 150 percent of the claimant's weekly benefit amount.

D. For persons without a verifiable assurance of work, suitable work is permanent work in their usual or substantially equivalent employment which provides wages and conditions of employment approximating those of their past employment if their prospects of finding the work are favorable. If prospects are unfavorable, work at lower skill or wage levels is suitable if there are few, if any,

workers unemployed in the locality for whom these openings would be more suitable than for the claimant, the claimant is reasonably suited for the work by virtue of education, training, work experience, or ability and the work offered is a reasonable departure from his usual occupation.

“Verifiable assurance” means an assurance that can be confirmed by claimant or employer information or independent department knowledge of the situation.

Item B may be applied only when the claimant does not have favorable prospects for finding work in his usual trade or occupation or substantially equivalent employment.

Statutory Authority: *MS s 268.021*

3305.0800 STATUTORY TERMS INTERPRETED.

Subpart 1. Applicability. The terms and phrases used in Minnesota Statutes, section 268.09, subdivision 2 shall have the meanings and explanations given in subparts 2 to 18.

Subp. 2. To apply. “To apply” means that the claimant must comply with all necessary application processes, beginning with the notice to appear for the interview with the job service and including actually calling at the place of business of the prospective employer when so advised by the department.

Subp. 3. Failure to apply. “Failure to apply” includes any willful action or neglect which demonstrates a lack of good faith in applying for employment.

Subp. 4. Failure to accept. “Failure to accept” consists of a direct statement of refusal by the claimant or the claimant’s failure to take reasonable steps to accept suitable work after it has been offered to him.

Subp. 5. Available, suitable work. “Available, suitable work” means that there is a definite job or vacancy to apply for or accept. Work is not available to the claimant when the employer finds the claimant unqualified for the position.

Subp. 6. Of which he was advised. “Of which he was advised” means that a claimant was made aware of a job by the department and offered an opportunity to apply for it. Although the employer’s name need not be provided to the claimant unless he accepts the referral, the job must be described in sufficient detail so the claimant is aware of the terms and conditions of employment.

Subp. 7. Risk involved to his health and safety. Work is not suitable for a claimant if the employment presents a risk to his health or physical condition which is not usually customary to that occupation. Extra hazardous work shall not be suitable work unless the claimant has training or experience in that occupation. When a claimant has a demonstrated fear of performing a particular employment that employment shall not be suitable employment. A claimant’s loss of ability to avoid previously accepted hazards must be considered.

Subp. 8. His physical fitness. To determine suitability of work in terms of the claimant’s physical fitness the department shall consider the type of work the claimant has most recently performed, any existing physical conditions, whether the work requires any physical ability the claimant does not possess, and other factors affecting his physical ability to perform the work. If the claimant’s physical condition prevents him from doing the work, the work is unsuitable. Medical evidence may be required to support the claimant’s statement that the work offered is not suitable because of the claimant’s physical condition.

Subp. 9. Prior training and experience. Work that requires a skill or particular training which the claimant does not already possess may be unsuitable. However, if the claimant lacks the skills and training needed to perform offered work, that work may be suitable if as part of the job the claimant is provided with the training necessary to develop the work skills needed or if the time and effort required to develop the skills is minimal.

Subp. 10. Prospects of securing work in his customary trade or occupation. If

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the prospects of a claimant finding work in his usual trade or occupation are unfavorable, then work in other occupations may be suitable work if the general conditions of part 3305.0700 are satisfied. In determining whether a claimant's prospects in a reasonable period of time are favorable or unfavorable, the department shall consider the following factors:

A. whether the claimant's particular skill or trade is not in demand because of protracted economic conditions, technological changes, or other reasons;

B. the number of unemployed persons seeking employment in the claimant's customary trade or occupation compared to the number of positions available;

C. the extent of the claimant's training and experience in his customary trade or occupation compared to the training and experience of other individuals seeking similar work if openings are limited;

D. the extent to which the claimant has investigated or exhausted the prospects available in his labor market area;

E. the length of time normally required to find work in the claimant's usual trade or occupation;

F. the prospects of work in his customary trade or occupation compared to the prospects of other suitable work; and

G. the claimant's verifiable assurances of work.

Subp. 11. Distance of available work from residence. To determine suitability in terms of distance, all factors must be considered, including distance, proximity to transportation, cost of transportation, type of transportation, transportation schedules, and time required for transportation. This determination is made not only in comparison to the claimant's most recent job but also in relation to that which is customary in his occupation. If it is customary in the claimant's occupation to relocate or change job sites, regardless of distance, then the work requiring relocation is suitable.

Subp. 12. Wages. The wages offered must approximate the prevailing wage for the work to be suitable. To determine suitability of work in terms of wages the total earnings must be considered. These include the wage rate, hours of work, method of payment, overtime practices, bonuses, incentive payments, and fringe benefits. When the offered work is at a rate of pay lower than the claimant's former rate consideration must be given to the length of the claimant's unemployment and the proportion of difference in the rates. The importance of the difference between the wages offered and the previous rate decreases as the period of unemployment increases. Work which may not be suitable because of lower wages during the early weeks of the claimant's unemployment may become suitable for him as his duration of unemployment lengthens and it becomes evident that prospects are remote for obtaining work in line with prior wages. A wage that is below the person's previous wage may be suitable if it is not substantially less favorable than that prevailing for similar work in the community.

Subp. 13. Hours. To determine suitability of work in terms of hours, the arrangement of hours in addition to the total number of hours is to be considered. An offer to work on a second, third, rotating, or split shift is suitable work if it is customary in the trade or occupation in the labor market area. However, the shifts are always suitable for individuals who customarily work for employers who use several shifts.

Subp. 14. Other conditions of work. The suitability of the work shall be determined by considering the provisions of the employment agreement, whether express or implied, including the physical conditions under which the work is done pursuant to the agreement. The term "other conditions of work" includes but is not limited to provisions for work rules, safety rules, sanitation, heat, light, and ventilation.

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Subp. 15. **Substantially less favorable to the individual.** Whether provisions of the work offered are substantially less favorable to the individual can be determined only by comparison of the conditions of the work offered to those prevailing for similar work in the local labor market area. The conditions of work offered are not compared to the previous work of the individual. Both the extent of the difference as well as its effect on the worker shall be considered. If the work offered has differences of no substantial consequence for the worker, it will not be considered to be substantially less favorable. If the wages offered are more than ten percent below the prevailing rate of pay or less than the applicable federal or state minimum wage for the type of work being considered, it will be considered to be substantially less favorable than that prevailing for similar work in the locality.

Subp. 16. **Prevailing.** Prevailing wages, hours, and other conditions of work are those which are offered to those who commence employment in similar work in the locality.

Subp. 17. **Locality.** "Locality" means the claimant's labor market area.

Subp. 18. **Good cause.** A claimant has good cause for refusal of suitable work only when there is some necessitous and compelling reason for refusal. Good cause for refusing a job may, but need not, be attributable to the employer. Good cause reasons for refusal are usually personal to the claimant and extraneous to the employment, and are usually of a temporary and emergency nature so as not to detach the claimant from the labor market.

Statutory Authority: *MS s 268.021*

3305.0900 REEMPLOYMENT OFFER.

A claimant is considered to have refused an offer of suitable reemployment from a base period employer unless the terms and conditions of the offer are substantially less favorable than the terms and conditions under which the principal part of the wage credits were earned with that employer in the claimant's base period.

A refusal of reemployment shall be with good cause if the claimant had previously quit the employment for good cause attributable to the employer and the conditions which were the basis for good cause still exist.

A refusal of reemployment shall be with good cause if the claimant previously separated from that employment because of his own serious illness and the work offered would adversely affect that illness.

Statutory Authority: *MS s 268.021*

3305.1000 PARTIAL BENEFITS EXEMPTION.

Parts 3305.0200 to 3305.0900 shall not apply to a claimant with respect to a claim for partial unemployment benefits.

Statutory Authority: *MS s 268.021*

3305.1100 BENEFIT CLAIM PROCEDURE.

Subpart 1. **Purpose and scope.** This part defines claim procedure and eligibility criteria under Minnesota Statutes, section 268.08, subdivision 1.

Subp. 2. **Initial claim.** To file a new claim for benefits or to reactivate an inactive claim, an individual shall report in person at an unemployment office and shall there:

A. present a valid social security account number card or other acceptable evidence of his social security number;

B. file an initial claim for benefits on a prescribed form; and

C. register for work, except that the initial claim for benefits may also constitute the individual's registration for work if it is determined that normal registration should be waived or postponed.

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The claim shall be effective on the Sunday of the calendar week in which the claim is reactivated or filed.

Subp. 3. Claim acceptance form. If the unemployment office cannot provide claim service on a given day, an individual shall be given a claim acceptance form to verify his attempt to file a claim on that date. If the individual presents a claim acceptance form to one of the local unemployment service offices within 14 days from the date of issuance of the claim acceptance form or when service is next provided in a part-time unemployment office, the initial claim shall be backdated as if filed in the calendar week in which the claim acceptance form was issued.

Subp. 4. Part-time unemployment office. Any individual who resides in an area in which there is a part-time unemployment office may report in person at that office and file a new or reactivated claim for benefits effective as of the Sunday of the first week of the individual's unemployment, provided that his first day of unemployment is subsequent to the last previous day that service was provided by the part-time unemployment office. No claim shall be effective more than 28 days prior to the calendar week in which the individual reports to file the claim.

Subp. 5. Permitted benefit years. An initial claim for benefits shall not establish a benefit year which begins prior to the Sunday next following the end of any previous benefit year except as otherwise provided by rule or law.

Subp. 6. Withdrawal of claim. An initial claim for benefits which has been filed with the department may not be withdrawn by the claimant or otherwise terminated by the department except as provided by other rule or law.

Subp. 7. Continued claim. A continued claim is a certification to the completion of one or more weeks of unemployment and a request for benefit credit for that period. To establish eligibility for benefits or waiting period credit for a week or weeks of unemployment following a new or reactivated claim an individual shall continue to report in person or by mail and file continued claims as directed by the department to the office responsible for the administration of his unemployment insurance, in this or any other state.

Subp. 8. Transferred claim. Any claimant filing continued claims covering more than four weeks of benefits through a single area office in this or some other state other than the area office where his initial claim or transferred claim is filed shall transfer his claim to that single office. No claimant shall be ineligible for failure to transfer his claim to another office unless, prior to the filing of a continued claim, the claimant has been directed to transfer his claim and has failed without good cause to comply.

Subp. 9. Late filed claim. Any individual who fails to file a continued claim in the manner and at the time and place specified by the department may report in person or by mail and file the claim within 14 days following the date specified by the department. Waiting period credit or benefits for each week that was covered by the delinquent claim shall be authorized if the claimant is otherwise eligible. No credit or benefits shall be authorized for subsequent weeks which were not claimed properly.

Any individual who for good cause fails to file a continued claim in the manner and at the time and place specified by the department may file the claim in person or by mail not more than 35 days following the expiration of his benefit year. The claimant, if otherwise eligible, shall be entitled to waiting period credit or benefits for each week that good cause for failure to report is established.

Subp. 10. Assistance in filing claim. The department shall make reasonable efforts to assist claimants who because of physical impairment or inability to communicate in the English language cannot provide information necessary to file benefit claims without assistance.

Subp. 11. Requirement to notify department of address and telephone changes. The claimant's address and telephone number on a new or reactivated claim form shall constitute the last known address and telephone number for purposes of

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mailing notices of determination or otherwise contacting the claimant unless a written notice of address or telephone change is received by the unemployment office where his claim is on file. Any change of address or telephone number shall constitute the last known address or telephone number for only those transactions occurring after written notice was received.

Statutory Authority: *MS s 268.021*

3305.1200 WEEK OF UNEMPLOYMENT.

Subpart 1. Scope and purpose. This part further defines "week" as defined under Minnesota Statutes, section 268.04, subdivision 23.

Subp. 2. Week calculated; labor dispute. An individual's week of unemployment shall consist of the consecutive seven-day period beginning with the day on which registration is made effective except following the termination of a labor dispute. Following termination of a labor dispute, week of unemployment is the remainder of the calendar week in which the labor dispute ended. An individual, if otherwise eligible, shall be entitled to one-fifth credit for each day, excluding Saturday, following the date on which the labor dispute ended.

Statutory Authority: *MS s 268.021*