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UNEMPLOYMENT COMPENSATION PROCEDURE 3310.0200

CHAPTER 3310 DEPARTMENT OF ECONOMIC SECURITY UNEMPLOYMENT COMPENSATION PROCEDURE

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3310.0200 UNEMPLOYMENT COMPENSATION FUND RECEIPTS AND DISBURSEMENTS.

Subpart 1. **Payments.** All moneys, checks, drafts, and United States postal money orders received by the Department of Economic Security in payment of contributions, interest, or penalties shall be delivered daily to the state treasurer who shall promptly deposit the same in a bank designated by the commissioner to the credit of the Minnesota unemployment compensation fund, clearing account. At least once each week the state treasurer shall issue his official transfer, transferring all of such funds which have had six days or more in which to clear the banks or other institutions upon which they are drawn, to the credit

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of the special disbursing account of the unemployment trust fund, c/o Commissioner of Accounts, Treasury Department, Washington, D.C., provided there is at least \$25,000 in such clearing account to be transferred.

Subp. 2. Requisition of money from the unemployment trust fund. The commissioner or his authorized representative shall periodically and from time to time requisition moneys from the unemployment trust fund deposited with the secretary of the treasury of the United States to the credit of the state of Minnesota in such amounts as he deems necessary for the payment of benefits under the Minnesota employment security law for a period of not to exceed one calendar quarter and in no case to exceed the amount standing to the account of the state of Minnesota.

Moneys so withdrawn shall be requisitioned to be paid by United States Treasury Department check or checks made payable to the treasurer of the state of Minnesota as custodian of the Minnesota unemployment compensation fund. The state treasurer upon receipt thereof shall immediately deposit the same to the credit of the Minnesota unemployment compensation fund, benefit account, in a bank designated by the commissioner as depository for the Minnesota unemployment compensation fund.

In cases of emergency the commissioner may arrange with the United States Treasury Department to transfer the required amount of money by wire to the credit of the state of Minnesota unemployment compensation fund, benefit account.

Subp. 3. Advance of money for payment of unemployment compensation to veterans. All moneys, checks, drafts, and United States postal money orders received for the Minnesota unemployment compensation fund from the treasurer of the United States as an advance of money for the payment of unemployment compensation to veterans under title IV of the Veterans' Readjustment Assistance Act of 1952, as amended, and to federal employees under United States Code, title 5, chapter 85, shall be promptly deposited in a bank designated by the commissioner to the credit of the Minnesota unemployment compensation fund, benefit account.

Subp. 4. Moneys received from other states to reimburse Minnesota. All moneys, checks, drafts, and United States postal money orders received from an unemployment compensation agency of another state to reimburse the Minnesota unemployment compensation fund for moneys disbursed by the Minnesota Department of Economic Security for payment of benefits to claimants pursuant to a reciprocal interstate agreement existing between the state of Minnesota, Department of Economic Security, and the unemployment compensation agencies of various other states, shall be promptly deposited in a bank designated by the commissioner to the credit of the Minnesota unemployment compensation fund, benefit account.

Subp. 5. Issuance of checks. The state treasurer, upon receipt of certification and abstract of disbursement signed by the commissioner or his duly authorized representative shall issue state treasurer's checks prepared by the Department of Economic Security and countersigned by the commissioner for the following purposes:

A. Payment of refunds to persons who have paid contributions, interest, and penalties to the Department of Economic Security in excess of the amount legally required pursuant to an order directing such payment signed by the commissioner. Such checks shall be drawn on the unemployment compensation fund, clearing account.

B. Payment of moneys to various state unemployment compensation agencies in reimbursement of this state's proportionate share of disbursements made by such agencies for payment of benefits pursuant to a reciprocal interstate arrangement or agreement for that purpose existing between the state of Minnesota, Department of Economic Security, and the proper authorities of such

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other state agency which is a party to such agreement. Such check shall be drawn on the unemployment compensation fund, benefit account.

C. For transfer of moneys from the unemployment compensation fund, clearing account, to the Minnesota Employment Security contingent fund account covering interest and penalties accrued under the Minnesota employment security law and collected and deposited into the unemployment compensation fund, clearing account, subsequent to April 17, 1945, pursuant to an order signed by the commissioner directing the transfer of such funds.

D. For the transfer, on or after April 1, 1953, from the clearing account of the unemployment compensation fund to the Minnesota employment security administration fund, of court and statutory costs paid by an employer in connection with the institution or prosecution of a suit by the Department of Economic Security to enforce the payment of contributions by such employer and which costs have been included in the remittance received by the department covering payment of contributions due and owing by such employer and deposited in the clearing account of the unemployment compensation fund.

E. Payment of benefits to unemployed individuals under the Minnesota employment security law and payment of unemployment compensation to veterans under title IV of the Veterans' Readjustment Assistance Act of 1952, as amended, and to federal employees under United States Code, title 5, chapter 85, shall be made by the Minnesota Department of Economic Security warrants or checks drawn against the Minnesota unemployment compensation fund, benefit account. All such warrants or checks shall carry the facsimile signature of the state treasurer and of the commissioner of the Department of Economic Security. All such warrants or checks written and issued in local employment offices of said department shall also be countersigned by a duly authorized cashier of the Department of Economic Security at such local employment offices. The commissioner or his duly authorized representative shall furnish to the state treasurer a post abstract of all warrants or checks countersigned each day by such duly appointed and authorized cashiers.

Statutory Authority: *MS s 268.021*

3310.0300 CONFIDENTIAL INFORMATION IN FILES AND RECORDS OF DEPARTMENT.

Subpart 1. **Information held confidential.** Information obtained from any employing unit or individual pursuant to the administration of the Minnesota employment security law or from any written return, report, statement, or determination with respect to the rights to benefits of any individual or any portion of any such document shall be held confidential and shall not be disclosed or open to public inspection in any manner revealing any such information or the individual's or employing unit's identity except as follows:

A. Information from the records of the Department of Economic Security shall be furnished to any claimant for benefits or his representative upon request for such information to the extent necessary for the proper presentation of such claimant's claim in any proceeding under the Minnesota employment security law.

B. Information from the records of the Department of Economic Security may in the discretion of the commissioner be furnished to the following:

(1) any agency of any other state or of the United States charged with the administration of an employment security law or the maintenance of a system of public employment offices;

(2) the Internal Revenue Service of the United States, Department of the Treasury;

(3) any agency of this state or the United States charged with the administration of public works or assistance through public employment.

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Any such agency or department seeking such information shall file with the Department of Economic Security a written request setting forth therein the nature of the information desired and the purpose for which such information is sought.

C. Information from the records of the Department of Economic Security may be disclosed in the form of statistical statements or reports which do not reveal the individual's or employing unit's identity.

Subp. 2. **Confidentiality of form OA-702.** Notwithstanding any other provisions of the rules of the Department of Economic Security:

A. All copies of form OA-702, or any part thereof, received from the Social Security Administration shall be kept in a confidential file and shall be returned to the Social Security Administration, if and when this department finds it has no further use for them.

B. The information contained on form OA-702 shall be used only for the administration of the Minnesota employment security law and no information contained therein shall be divulged to any other individual or agency except that such information may be divulged to an authorized agent or agency of the Social Security Administration.

C. All requests for copies of form OA-702, or any of the information contained thereon, shall be denied, and the person from whom the request is received shall be referred to the regional office of the Social Security Administration.

Statutory Authority: *MS s 268.021*

3310.0400 CONTRIBUTIONS BY EMPLOYERS.

Subpart 1. **Payment on quarterly basis.** All contributions (excepting voluntary contributions under Minnesota Statutes, section 268.06, subdivision 24) required from employers with respect to wages paid and wages overdue and delayed beyond the usual time of payment for employment performed subsequent to January 1, 1963, shall become due and be paid on a quarterly basis on or before the last day of the month next following the calendar quarter for which the contributions have accrued, with the following exception: contributions for the first quarter of 1963 are due and payable on or before May 15, 1963.

Subp. 2. **Payment date.** The first contribution payment of any employing unit which becomes an employer at any time during a calendar year shall become due on, and shall be paid on or before, the last day of the month next following the close of the quarter in which such employing unit fulfills the conditions with respect to becoming an employer, and shall include contributions accrued for the entire period beginning January 1 of such calendar year up to and including the calendar quarter in which the employing unit fulfills the conditions with respect to becoming an employer; except that:

A. An employing unit which satisfies the conditions with respect to becoming an employer after June 30 of any calendar year may, upon application, be authorized to pay its first contribution in installments; provided, however, that no installment shall be postponed beyond the January 31 succeeding the period with respect to which such liability has accrued, and provided further that if the employer fails to pay any installment in full when it falls due, the entire unpaid balance shall be paid upon notice from the department with interest from date of default.

B. The first contribution payment (with respect to services not previously covered by the law) of any employing unit which elects to become an employer or to have nonsubject services performed for it deemed employment shall upon written approval of such election by the commissioner become due on, and shall be paid on or before, the last day of the month next following the close of the calendar quarter which includes the effective date of such election,

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or the calendar quarter which includes the date of approval, whichever is later in point of time, and shall include contributions with respect to all wages for services covered by such election paid on and after the effective date and not later than the close of the last completed calendar quarter preceding the due date for such contributions; provided that where circumstances so warrant the commissioner may permit the payment of the first contribution in installments as provided in item A.

Subp. 3. Determination of wages not determinable during previous pay period. Wages with respect to employment during the previous pay periods, the amount of which and the persons to whom payable were not determinable during any such previous pay period, shall be deemed to be wages for employment in the pay period in which such wages were paid or determined to be due but not paid.

Subp. 4. Assessment of contribution. If the commissioner believes that the collection of any contribution under the provisions of the Minnesota employment security law will be jeopardized by delay, he shall, whether or not the time otherwise prescribed by this rule for making return and paying such contributions has expired, immediately assess such contribution together with all interest and penalties, the assessment of which is provided for by law. Such contribution, penalties, and interest shall thereupon become immediately due and payable, and immediate notice and demand shall be made by the commissioner for the payment thereof.

Statutory Authority: *MS s 268.021*

3310.0500 ADJUSTMENTS AND REFUNDS OF CONTRIBUTIONS.

Subpart 1. Contribution reports errors. Contribution reports, when once submitted, will not be returned to employers for correction. Whenever any employer discovers or is notified by the commissioner that the contribution report submitted by him is incorrect resulting in overpayment of contributions due and owing, such employer may file an application for credit allowance or refund within three years from the date on which such overpayment was made. Such application shall be on a form prescribed by the commissioner and furnished by the department which, among other things, shall show the correct amount of contributions claimed to be due for the period involved and the alleged overpayment. Adjustment shall be made by the commissioner in the form of credit allowance or refund as provided in subpart 2 equal to that portion of contributions erroneously paid which exceeds the benefits paid to claimants as a direct result of the employer's erroneous report.

If the contribution report first submitted by an employer understates the amount of contributions due and owing for a given period, he shall file a supplemental report for such period and make remittance covering all additional contributions due and owing for such period.

If it is apparent upon examination of any regular or supplemental contribution report that a greater contribution than is required by law has been paid, the commissioner may, within three years from the date of such overpayment, make an adjustment and issue a credit adjustment memorandum for such overpayment.

If it is not apparent from the examination of any regular or supplemental contribution report that a contribution greater than that required by law has been made, any employer or employing unit claiming a credit adjustment shall file with the commissioner a written application for such adjustment within three years from the date on which such overpayment was made. Such credit adjustment shall be granted only after a review of the application which shall set forth such information in the matter as may be required. If, after such review, the adjustment is found to be in order, the commissioner shall issue a credit adjustment memorandum for such overpayment.

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Subp. 2. **Credit adjustment memorandum.** Each credit adjustment memorandum issued shall be mailed to the employer entitled thereto at his last known address and he may attach such memorandum to his contribution and wage report to the department for either the first or second reporting period following receipt of such memorandum by him. Upon receipt thereof by the department such credit memorandum will be applied against contributions due for the period covered by his contribution report to which such memorandum is attached and his account will be adjusted accordingly. In any case wherein the employer fails to utilize the credit memorandum issued to him as provided above, the commissioner may cancel such credit memorandum and issue an order directing refund covering such overpayment. If it is impractical to apply any such credit adjustment memorandums against subsequent contributions, the commissioner, upon request of the employer or employing unit or upon his own initiative, may issue an order directing refund covering such overpayment. The state treasurer, upon receipt from the commissioner of an order directing refund, shall issue his warrant (check) made payable in the amount and to the party named in such order.

Statutory Authority: *MS s 268.021*

3310.0600 SETTLEMENT AGREEMENTS AND CANCELLATION OF CLAIMS.

Subpart 1. **Application for compromise settlement.** Any person who is indebted to the state of Minnesota, Department of Economic Security, because of failure to pay contributions with respect to any given period required under the Minnesota employment security law may file with the Minnesota Department of Economic Security a verified application on a form prescribed by the commissioner requesting a compromise settlement of such indebtedness, which application shall set forth in detail:

A. the full name and address of the applicant; if a copartnership, the name and address of each such copartner; and if a corporation, the name of such corporation and the name and address of each statutory officer; and the employer's account number, if any;

B. the calendar quarters with respect to which the delinquency exists, the amount of contributions owing for each such quarter, the interest accrued thereon and other penalties, if any, and the total amount of indebtedness for contributions, interest, and penalties;

C. the reason for failure to pay such contributions, interest, and penalties;

D. a financial statement of the applicant;

E. information indicating whether or not the applicant is still engaged in business;

F. the reason for requesting a compromise of such indebtedness; and

G. the amount of contributions the applicant is able to pay and the time such payment will be made.

Subp. 2. **Compromise agreement.** Upon receipt of such application, it shall be considered by the commissioner or the representative or representatives designated by him to consider such matters and pursuant thereto an agreement may be entered into between the applicant and the Department of Economic Security compromising such indebtedness in accordance with the facts in each case as follows:

A. In any case wherein the indebtedness is past due and owing:

(1) If the applicant is no longer engaged in business or is insolvent or has established permanent residence in another state or where it is shown to the satisfaction of the commissioner or his representatives that the question of liability was sufficiently doubtful to justify an honest belief on the part of the applicant that he was not liable for such contributions, the indebtedness may be

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compromised by cancellation of a portion or all of the interest, penalties, and costs, if any.

(2) If the debtor at the time the indebtedness accrued was a copartnership and is no longer engaged in business, the indebtedness may be compromised and the claim released as against any member of such copartnership who was paid his just share of such indebtedness.

B. In any case wherein the indebtedness is more than two years past due:

If it is shown to the satisfaction of the commissioner or his representatives that the question of liability was doubtful and controversial justifying an honest belief on the part of the applicant that he was not liable for such contributions, the indebtedness may be compromised by cancellation of a portion or all of the contributions more than two years past due together with all of the interest and penalties accrued thereon.

C. In any case where the indebtedness is more than four years past due:

(1) If the applicant is still engaged in business, the indebtedness may be compromised by cancellation of a portion or all of the interest and penalties owing, depending upon the facts in each case.

(2) If the applicant is no longer engaged in business, the indebtedness may be compromised by cancellation of all accrued interest and penalties, and cancellation of contributions in accordance with what the facts in each case may justify.

(3) If the applicant is insolvent or has established permanent residence in another state and is no longer engaged in business, the indebtedness may be compromised according to the facts in each case by the cancellation of all accrued interest, penalties, and such portion of the contributions as the commissioner deems proper.

Subp. 3. **Inability to collect.** In any case wherein the debtor is a corporation which has been dissolved or an individual who is deceased and the department's claim has not been reduced to judgment and there are no assets known to the commissioner or his representative out of which collection of a substantial portion of the indebtedness can be enforced, contributions, interest, and penalties may be canceled and written off the books of account of the Department of Economic Security; however, in any such case where the department's claim has been reduced to judgment, the matter may be compromised upon payment of such an amount as the commissioner deems advisable and proper.

Statutory Authority: *MS s 268.021*

3310.0700 SEPARATION NOTICE REQUIRED FROM EMPLOYERS.

Any employer upon separation of an employee for any reason other than lack of work or upon a claimant's refusal of an offer of reemployment shall within three days file with the Minnesota Department of Economic Security a separation notice on a form furnished by the department. Such notice shall be mailed to the Minnesota Department of Economic Security and a copy thereof handed to the worker or mailed to the last known address of the worker if personal delivery is impossible. Such notice shall set forth:

A. the employer's name, address, and employer account number as registered with the department;

B. the worker's name and social security account number;

C. the date employment began and the date of separation or refusal of reemployment;

D. a brief statement of the reason for separation or the offer and refusal of reemployment; and

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E. such other information as required by such form.

In cases of unemployment due to a strike, lockout, or other labor dispute, the employer shall, within 48 hours, file with the Department of Economic Security at its state office a notice setting forth the existence of such dispute and the approximate number of employees affected.

Statutory Authority: *MS s 268.021*

PAYMENT OF BENEFITS FOR PARTIAL UNEMPLOYMENT

3310.0800 DEFINITIONS.

Subpart 1. **Partially unemployed individual.** A "partially unemployed individual" is one who, during a particular week earned wages less than his weekly benefit amount, was employed by a regular employer, and worked less than his normal customary full-time hours for such employer because of lack of work.

Subp. 2. **Week of partial unemployment.** With respect to a partially unemployed individual whose wages are paid on a weekly basis, a "week of partial unemployment" shall consist of his pay-period week; with respect to a partially unemployed individual whose wages are not paid on a weekly basis, a "week of partial unemployment" shall consist of a calendar week, provided that the commissioner may, upon his own initiative or upon application, prescribe as to any individual or group of individuals such other period of seven consecutive days as he may find appropriate under the circumstances.

Statutory Authority: *MS s 268.021*

3310.0900 EMPLOYER RESPONSIBILITY WITH RESPECT TO NOTICES OF POTENTIAL ELIGIBILITY FOR PARTIAL BENEFITS.

Subpart 1. **Notice required.** Any employer, who regularly employs an individual, shall, after the termination of any week, and not later than the regular pay day for such week, give each such individual a copy of notice of potential eligibility for benefits for partial unemployment (MES-95) or such other forms containing substantially the same information as may be approved by the commissioner, except as otherwise provided in subpart 2, under either of the following circumstances:

A. if, because of lack of work in such week, the hours of work of such individual have been reduced by such employer to less than his normal customary full-time hours and less than four full days' work, or the time or dollar earnings equivalent thereof; or

B. if, because of lack of work in such week, such individual's earned remuneration is less than the minimum weekly benefit amount provided for by law.

Provided, that no such notice is required from any employer to any employee for any week in which such employee's earned remuneration is equal to or in excess of the maximum weekly benefit amount provided for by law.

Subp. 2. **Exception to employer notice to worker.** The Department of Economic Security, upon the filing of a first claim for partial benefits for a benefit year by an individual, shall promptly notify such individual of his potential rights to partial benefits and shall notify his employer of such individual's weekly benefit amount and benefit year ending date. Upon receipt of such notice, such employer shall record such weekly benefit amount and benefit year ending date upon his payroll records. No notice of potential eligibility for partial benefits is required to be given by an employer in any benefit year to any worker of whose weekly benefit amount and current benefit year ending date the employer has received notice from the Department of Economic Security.

Statutory Authority: *MS s 268.021*

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3310.1000 EMPLOYER TO FURNISH EVIDENCE OF PARTIAL UNEMPLOYMENT.

After any employer has been notified of the weekly benefit amount and current benefit year ending date of any worker in his employ, such employer, until otherwise notified, shall, after the termination of each week and not later than the regular pay day for such week (as described in part 3310.0800, subpart 2) which begins within such benefit year and for which week such worker's wages are less than such weekly benefit amount because of the failure of such employer to supply such worker with his normal customary full-time hours of work in such week, furnish such worker with a low-earnings statement (MES-96) as prescribed by the Department of Economic Security signed by the employer, setting forth the information required therein, including the worker's name and social security account number, the beginning and ending dates of such week, the wages earned therein, and a statement that such worker worked less than his normal customary hours during such week because of the failure of such employer to supply such work.

Any employer may substitute for the low-earnings statement written evidence concerning partial unemployment in the form of a pay envelope, pay check stub or copy thereof or other suitable medium provided that the form containing such evidence has been approved by the commissioner. Approval of such substitute form will be granted only if it contains a provision for certification signed by the employer or other positive identification of the authority supplying the evidence and if it contains all items necessary for establishing the identity of the employer and claimant, the period covered, and the total amount of earnings in each week of such pay period, and such other items as are necessary for ascertaining that the week of partial unemployment was one of less than full-time, and that the individual was not unavailable when work was offered.

Statutory Authority: *MS s 268.021*

3310.1100 EMPLOYERS TO MAKE LOW EARNINGS REPORTS UPON REQUEST.

Upon request by the commissioner, employers shall file a report for the individual specified in the request, on a form prescribed by the commissioner, showing with respect to each week covered by the request the individual's total amount of earnings for such week, whether such individual worked less than his normal customary full-time hours because of the failure of such employer to furnish him with such work, and whether the individual earned less than his weekly benefit amount. Such report shall be mailed to the address specified in the request within two business days after its receipt by the employer.

Statutory Authority: *MS s 268.021*

3310.1200 REGISTRATION AND FILING OF CLAIMS FOR PARTIAL UNEMPLOYMENT.

The provisions of ES 19 with respect to registration for work and reporting simultaneously with the filing of a claim for benefits are, in accordance with the provisions of Minnesota Statutes, section 268.08, subdivision 1, waived in connection with the filing of a claim for benefits for partial unemployment.

An initial claim or continued claim for benefits for partial unemployment may be filed by any individual in person at any local employment office in the state of Minnesota or with any authorized itinerant agent of the Department of Economic Security on a form supplied for that purpose by the department and such a claim when so filed shall, except as provided in the next paragraph, constitute such individual's claim for benefits or for waiting period credit with respect to each week of partial unemployment specified in the claim; provided that such claim shall not be allowed if filed more than 35 days after the

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individual has been furnished by his employer or the department with information as to his earnings in any such week as provided in part 3310.0900, 3310.1000, or 3310.1100, except as provided in part 3310.1300.

No such claim shall be allowed with respect to any week specified therein unless at the time of filing the individual claiming benefits shall present evidence of his wages consisting of notices of potential eligibility for benefits, or low-earnings statements, executed by his employer, if he has received either of such notices with respect to any week for which benefits are claimed; provided, however, that the loss of such evidence shall not result in any forfeiture of benefit rights.

Statutory Authority: *MS s 268.021*

NOTE: Rule ES 19 has been repealed.

3310.1300 EXTENDED PERIOD FOR REGISTRATION AND THE FILING OF CLAIMS FOR GOOD CAUSE.

Notwithstanding the provisions of part 3310.1200, if the commissioner finds that the failure of any individual to register and file a claim for partial unemployment benefits was due to failure on the part of the employer to comply with any of the provisions of part 3310.0900, 3310.1000, or 3310.1100 or to coercion or intimidation exercised by the employer to prevent the prompt filing of such claim, or to failure by the department to discharge its responsibilities promptly in connection with such partial unemployment, the commissioner shall extend the period during which such claim may be filed to a date which shall not be less than one week after the individual has received appropriate notice of his potential rights to benefits and his earnings during the period of such partial unemployment; provided, however, that such period shall not be extended to any date more than 13 weeks after the end of the benefit year during which the week of partial unemployment for which the benefits might otherwise be claimed occurred.

Statutory Authority: *MS s 268.021*

3310.1400 EMPLOYERS TO KEEP RECORDS OF PARTIAL UNEMPLOYMENT.

In addition to the requirements set forth in ES 8 each employer shall keep his payroll records in such form that it would be possible from an inspection thereof to determine with respect to each worker in his employ who may be eligible for partial benefits:

- A. wages earned, by weeks, as described in part 3310.0800, subpart 2;
- B. whether any week was in fact a week of less than his customary full-time hours;
- C. time lost, if any, by each such worker, due to his unavailability for work.

Statutory Authority: *MS s 268.021*

NOTE: Rule ES 8 has been repealed.

PAYMENT OF BENEFITS TO INTERSTATE CLAIMANTS

3310.1500 SCOPE.

Parts 3310.1500 to 3310.2200 shall govern the Minnesota Department of Economic Security in its administrative cooperation with other states adopting a similar regulation for the payment of benefits to interstate claimants.

Statutory Authority: *MS s 268.021*

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3310.1600 DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 3310.1600 to 3310.2200 have the meanings given them in this part, unless the context clearly requires otherwise.

Subp. 2. **Agent state.** "Agent state" means any state in which an individual files a claim for benefits from another state.

Subp. 3. **Benefits.** "Benefits" means the compensation payable to an individual, with respect to his unemployment, under the unemployment compensation law of any state.

Subp. 4. **Interstate benefit payment plan.** "Interstate benefit payment plan" means the plan approved by the Interstate Conference of Employment Security Agencies under which benefits shall be payable to unemployed individuals absent from the state (or states) in which benefit credits have been accumulated.

Subp. 5. **Interstate claimant.** "Interstate claimant" means an individual who claims benefits under the unemployment compensation law of one or more liable states through the facilities of an agent state. The term "interstate claimant" shall not include any individual who customarily commutes from a residence in an agent state to work in a liable state unless the Minnesota Department of Economic Security finds that this exclusion would create undue hardship on such claimants in specified areas.

Subp. 6. **Liable state.** "Liable state" means any state against which an individual files, through another state, a claim for benefits.

Subp. 7. **State.** "State" includes the District of Columbia and Puerto Rico.

Subp. 8. **Week of unemployment.** "Week of unemployment" includes any week of unemployment as defined in the law of the liable state from which benefits with respect to such week are claimed, except that no week of less than his customary full-time work and reduced earnings for an individual attached to his regular employer shall be considered a week of unemployment for purposes of this rule.

Statutory Authority: *MS s 268.021*

3310.1700 REGISTRATION FOR WORK.

Each interstate claimant shall be registered for work, through any public employment office in the agent state when and as required by the law, regulations, and procedures of the agent state. Such registration shall be accepted as meeting the registration requirements of the liable state.

Each agent state shall duly report to the liable state in question, whether each interstate claimant meets the registration requirements of the agent state.

Statutory Authority: *MS s 268.021*

3310.1800 BENEFIT RIGHTS OF INTERSTATE CLAIMANTS.

If a claimant files a claim against any state, and it is determined by such state that the claimant has available benefit credits in such state, then claims shall be filed only against such state as long as benefit credits are available in that state. Thereafter, the claimant may file claims against any other state in which there are available benefit credits.

For the purpose of parts 3310.1500 to 3310.2200, benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable, or whenever benefits are affected by the application of a seasonal restriction.

Benefit credits in any state shall be deemed to be unavailable for partial unemployment benefit purposes if that state does not provide for the interstate payment of partial unemployment benefits.

The benefit rights of interstate claimants established by parts 3310.1500 to 3310.2200 shall apply only with respect to new claims (notices of unemployment) filed on or after July 5, 1953.

Statutory Authority: *MS s 268.021*

3310.1900 CLAIMS FOR BENEFITS.

Claims for benefits or waiting period shall be filed by interstate claimants on uniform interstate claim forms and in accordance with uniform procedures developed pursuant to the interstate benefit payment plan. Claims shall be filed in accordance with the type of week in use in the agent state. Any adjustments required to fit the type of week used by the liable state shall be made by the liable state on the basis of consecutive claims filed.

Claims shall be filed in accordance with agent-state regulations for intrastate claims in local employment offices, or at an itinerant point, or by mail. With respect to claims for weeks of unemployment in which an individual was not working for his regular employer the liable state shall, under circumstances which it considers good cause, accept a continued claim filed up to one week, or one reporting period, late. If a claimant files more than one reporting period late, an initial claim must be used to begin a claim series and no continued claim for a past period shall be accepted.

Statutory Authority: *MS s 268.021*

3310.2000 DETERMINATIONS OF CLAIMS.

The agent state shall, in connection with each claim filed by an interstate claimant, ascertain and report to the liable state in question such facts relating to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent state.

The agent state's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts. The agent state shall not refuse to take an interstate claim.

Statutory Authority: *MS s 268.021*

3310.2100 APPELLATE PROCEDURE.

The agent state shall afford all reasonable cooperation in the taking of evidence and the holding of hearings in connection with appealed interstate benefit claims.

With respect to the time limits imposed by the law of a liable state upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant shall be deemed to have been made and communicated to the liable state on the date when it is received by any qualified officer of the agent state.

Statutory Authority: *MS s 268.021*

3310.2200 EXTENSION OF INTERSTATE BENEFIT PAYMENTS TO INCLUDE CLAIMS TAKEN IN AND FOR CANADA.

Parts 3310.1500 to 3310.2200 shall apply in all its provisions to claims taken in and for Canada.

Statutory Authority: *MS s 268.021*

3310.2300 COMBINING OF WAGE CREDITS PURSUANT TO INTERSTATE RECIPROCAL ARRANGEMENTS.

Parts 3310.2300 to 3310.2600 shall govern the Minnesota Department of Economic Security in its administrative cooperation with other states adopting a similar rule for the combining of wage credits pursuant to reciprocal benefit.

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arrangements as provided by Minnesota Statutes 1953, section 268.13, subdivisions 1 and 2.

Statutory Authority: *MS s 268.021*

3310.2400 BASIC INTERSTATE PLAN FOR COMBINING WAGE CREDITS.

Subpart 1. Wage credits in two or more states. Whenever a claimant has wage credits in two or more states which are parties to an interstate reciprocal arrangement, upon the basis of which arrangement such claimant may be entitled to benefits under the Minnesota employment security law or a similar law of any other participating state in which such wage credits have accrued, but such wage credits are insufficient to qualify such claimant for benefits under the law of any single state in which the wages were earned, such wages shall, in accordance with the interstate arrangement for the combining of wage credits, be deemed to be wages for insured work and the wage credits resulting from wages so earned combined for the purpose of determining the claimant's rights to benefits under the Minnesota employment security law or under a similar law of any other participating state.

Subp. 2. Paying state reimbursement. The paying state shall be reimbursed for benefits paid by it pursuant to such interstate reciprocal arrangement by each state which has transferred wage credits to such paying state pursuant to such arrangement in the same proportion as the wage credits transferred by each such state bear to the claimant's total combined wage credits.

Subp. 3. Not determining future contributions. Benefits paid from the Minnesota unemployment compensation fund pursuant to such interstate reciprocal arrangement shall not be used as a factor in determining the future contribution rate of any employer.

Subp. 4. Definitions. "Participating state" means any state which is a party to the interstate reciprocal arrangement or agreement.

"Paying state" means the participating state in which the claim for benefits has been filed.

"Transferring state" means a participating state which transfers to the paying state a record of wage credits currently available in such state for the payment of benefits, any part of which is used by the paying state to determine the benefit rights of a claimant.

Statutory Authority: *MS s 268.021*

3310.2500 EXTENDED INTERSTATE PLAN FOR COMBINING WAGE CREDITS.

Subpart 1. Interstate reciprocal agreement to combine wage credits. Commencing April 1, 1956, whenever a claimant has wage credits in two or more states which are parties to an interstate reciprocal arrangement, upon the basis of which arrangement such claimant may be entitled to benefits under the Minnesota employment security law or a similar law of any other participating state in which such wage credits have accrued, and such wage credits are sufficient to qualify the claimant for benefits but for less than maximum benefits in any one of such states, benefits to such claimant may be increased but not to exceed the maximum in such state by combining wage credits in such state with wage credits in all participating transferring states in which he has insufficient wage credits for a valid claim.

Subp. 2. Reimbursement of paying state. The paying state shall be reimbursed for benefits paid by it pursuant to such interstate reciprocal arrangement by each state which has transferred wage credits to such paying state in accordance with the reimbursement provisions agreed to by all states participating in such interstate reciprocal arrangement.

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Subp. 3. **Not charged to experience rating account of employer.** Benefits paid from the Minnesota unemployment compensation fund pursuant to such reciprocal arrangement, shall not be charged to the experience rating account of any Minnesota base period employer in any such claim for benefits in excess of the amount such base period employer would have been charged on any such valid claim in which Minnesota is the paying state had benefits not been increased by combining wage credits from one or more other participating states.

Since under this plan wage credits will not be transferred to a participating state if such wage credits are sufficient to establish for the claimant a valid claim for benefits in Minnesota, reimbursements to any other participating state from the Minnesota unemployment compensation fund shall not, in accordance with Minnesota Statutes, section 268.06, subdivision 5, clause (2), be charged to the experience rating account of any employer from whom such wages were earned.

Subp. 4. **Definitions.** "Participating state" means any state which has subscribed to the extended interstate plan for combining wage credits.

"Paying state" means a participating state, chosen by the claimant, in which he has qualifying wage credits which entitle him to less than maximum benefits in such state.

"Transferring state" means a participating state in which the claimant lacks wage credits sufficient to qualify for benefits and which transfers to the paying state a record of the claimant's wages currently available in such state for the payment of benefits, any part of which is used by the paying state to determine the combined wage claimant's benefit rights under the extended interstate plan for combining wage credits.

Statutory Authority: *MS s 268.021*

3310.2600 CONSOLIDATED INTERSTATE PLAN FOR COMBINING WAGE CREDITS.

Subpart 1. **Application.** Whenever all of a claimant's wage credits are in states participating under this plan, this plan shall apply regardless of eligibility under either the basic or extended interstate plans for combining wage credits outlined in part 3310.2400 and 3310.2500 provided that whenever some of a claimant's wage credits are in a nonparticipating state this plan shall apply only if the claimant elects to waive combining such employment. In absence of such waiver, the claimant's wage credits shall be combined as outlined in part 3310.2400 or 3310.2500 whichever is applicable.

Subp. 2. **Definitions.** Unless the language or context clearly indicates otherwise, the following terms shall be given the meanings subjoined to them:

A. "Consolidated combined wage claim" means a claim filed under this plan.

B. "Consolidated combined wage claimant" means a claimant who has wage credits in more than one participating state and who as to one or more such states is not monetarily qualified and who has filed a claim under this plan.

C. "Participating state" means any state which has subscribed to this plan.

D. "Paying state" means:

(1) As to a consolidated combined wage claimant who is not monetarily qualified in any state, the participating state in which he filed a consolidated combined wage claim if he thereby becomes monetarily qualified. If he does not thus become monetarily qualified, it means the participating state he selects from among those states in which he has wage credits.

(2) As to a consolidated combined wage claimant who is monetarily qualified in one or more states, the participating state selected by the claimant in which he has qualifying wages for less than the maximum benefits in such state.

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E. "Transferring state" means a participating state which transfers to the paying state wage credits in the base period of the paying state.

Subp. 3. **Filing for claims.** Claims for benefits shall be filed by a consolidated combined wage claimant in the same manner as any other claimant who is claiming benefits under the employment security law of the paying state. If claims are filed in a state other than the paying state, the interstate benefit payment provisions of parts 3310.1500 to 3310.2200 shall apply.

Subp. 4. **Payment from the unemployment compensation fund.** Benefits shall be paid from the unemployment compensation fund of the paying state in accordance with the benefit formula of the paying state to the same extent as if all transferred wages were wage credits under the law of the paying state.

Subp. 5. **Wages paid included in determining benefit rights.** Wages paid to a consolidated combined wage claimant during the paying state's base period and reported for that period by a transferring state as currently available shall be included by the paying state in determining benefit rights. Such wages used as the basis for determination of benefits by the paying state shall be unavailable for determining or paying benefits under the employment security law of the transferring state or any other state.

Subp. 6. **Reimbursement of paying state.** The paying state shall be reimbursed for benefits paid pursuant to the consolidated interstate plan for combining wage credits in the same proportion as the wage credits transferred by each transferring state bear to the claimant's total combined wage credits.

Subp. 7. **Not charged to experience rating account of employer.** Benefits paid from the Minnesota unemployment compensation fund pursuant to a consolidated combined wage claim shall not be charged to the experience rating account of any Minnesota employer in excess of the amount such employer would have been charged had such benefits not been increased by combining wage credits from other participating states.

Subp. 8. **Wage credits not transferred.** Wage credits will not be transferred to a participating state if such credits are sufficient to establish a valid claim for benefits in Minnesota; therefore, reimbursement to any other participating state shall not be charged to the experience rating account of any employer from whom such wage credits were earned.

Statutory Authority: *MS s 268.021*

DETERMINATION OF CLAIMS FOR BENEFITS AND APPEALS

3310.2700 DEPARTMENT'S DETERMINATION RELATING TO VALIDITY OF CLAIM.

Subpart 1. **Separation notices.** Whenever an individual reports to file a claim for benefits, he shall be required to furnish separation notices which he has received from base period employers.

Subp. 2. **Request for wage and separation information.** Upon the filing of an initial claim for benefits, the department shall send to each base period employer a request for wage and separation information which the employer shall complete and return to the department within seven days after the date on which such form was mailed to the employer. In addition to such other information as may be required, such requests shall be completed by the employer to provide the following information:

- A. the total wage credits earned in the base period;
- B. the number of credit weeks which end in the base period;
- C. the week-ending dates for each calendar week within the base period in which the individual earned less than the amount required to make a credit week and the amount of earnings in each such week;
- D. the dates on which the worker's employment began and terminated;

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E. the reason for separation or separations of such individual from the employ of the employer; and

F. the employer's protest, if any, relating to the ineligibility or disqualification of the individual.

The commissioner may adopt special procedures for obtaining wage and separation information during periods of mass layoff.

Subp. 3. Late fee. An employer who fails, without good cause, to file the wage and separation information required by parts 3310.2700 to 3310.3300 within seven days after the date such request was mailed to his last known address shall be liable for a late filing fee of not less than \$5 nor more than \$25 to be paid to the Department of Economic Security and credited to the contingent fund. For the purpose of this subpart, "file" means the delivery of the completed request for wage and separation information to the commissioner or any of his agents or representatives or the depositing of the same in the United States mail properly addressed to the department with postage prepaid thereon, in which case the same shall have been filed on the day indicated by the cancellation mark of the United States Post Office Department.

Subp. 4. Failure to obtain wage and separation information. Upon failure of the Department of Economic Security to obtain wage and separation information from an individual's employing unit or employing units, a certification may be filed by said individual setting forth, in addition to other information, the following:

A. the name and address of any employing unit for whom said individual performed services during the base period;

B. the total number of credit weeks which end within the base period;

C. the total base period wage credits earned in insured work with such employing unit;

D. the week-ending dates for each calendar week within the base period in which the individual earned less than the amount required to make a credit week and the amount of earnings in each such week;

E. the inclusive dates of employment; and

F. the reason for separation or separations from the employ of the employing unit.

Such certification shall be accompanied where possible by payroll slips, check stubs, Internal Revenue forms or such other documents which will serve to substantiate the allegations set forth in said certification. When such certification as set forth above has been submitted, department records shall be examined to determine if the employing unit is an employer within the meaning of the employment security law, and if it is found that for the period in question such employing unit is subject, information contained in such certification shall be used to determine the individual's benefit rights. In absence of fraud, if a redetermination of benefit rights based on an employer's late report subsequently cancels or reduces the claimant's benefit entitlement, the claimant shall not be required to make repayment to the fund of any benefits paid prior to such redetermination.

Subp. 5. Initial determination of validity of claim. Upon receipt of wage and separation information from either the employer's report or a claimant's certification, the department shall make an initial determination as to the validity of such claim and deliver or mail a notice thereof to the claimant and all other interested parties. The claimant or any other interested party may appeal such initial determination to an appeal tribunal designated by the commissioner to hear and determine such matters.

Statutory Authority: *MS s 268.021*

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3310.2800 DEPARTMENT'S DETERMINATION RELATING TO INELIGIBILITY OR DISQUALIFICATION OF CLAIMANT.

Subpart 1. Employer's setting forth ineligibility or disqualification facts. Any employer upon receiving a request for wage and separation information shall, if in his opinion the claimant should be determined ineligible or disqualified or receive benefits pursuant to said claim, raise the issue of ineligibility or disqualification by completing the separation portion of said form setting forth the facts upon which he bases his contention that the claimant should be determined ineligible or disqualified to receive benefits.

Subp. 2. Written determination, notice sent to claimant and employer. Upon receipt of a protest of eligibility or disqualification filed by an employer on a request for wage and separation information on a valid claim, such issue or issues shall be considered and a determination in writing made with respect thereto and a notice thereof mailed or delivered to the claimant and the employer. The claimant or other interested party may appeal said initial determination to an appeal tribunal.

Subp. 3. Disputed claim sent to appeal tribunal. The commissioner may in his discretion refer any disputed claim directly to an appeal tribunal for a hearing and determination in accordance with the procedure prescribed by this rule with respect to cases heard on appeal.

Statutory Authority: *MS s 268.021*

3310.2900 APPEAL TO APPEAL TRIBUNAL.

Subpart 1. Appeal. A claimant or any other interested party may appeal, from an initial determination pertaining to the validity of a claim for benefits referred to in part 3310.2700, subpart 5, or from a determination pertaining to an eligibility or disqualification issue referred to in part 3310.2800, subpart 2, to an appeal tribunal designated by the commissioner to hear and determine such matters.

Subp. 2. Appeal procedures. The party appealing shall, within seven days after delivery of the notice of determination or within seven days after the date of mailing of said notice, file with the Department of Economic Security at the employment office where the claim was filed or at the state office at Saint Paul, Minnesota, a notice of appeal, in writing, provided that such appeal may be filed within ten days after the date of delivery or within 12 days after the date of mailing if the commissioner finds that the failure to file such appeal timely was due to compelling good cause. Said appeal shall set forth:

- A. the name, address, and social security account number of the claimant;
- B. reference to the determination or order from which the appeal is taken;
- C. the fact that an appeal from such determination is being made; and
- D. the grounds upon which such appeal is based.

The notice of appeal shall be signed by the party appealing. In addition, one copy of such notice of appeal shall be submitted to the Department of Economic Security for each opposing party to the appeal. Copies of said notice of appeal shall at once be mailed by the department to all interested parties in the matter.

Subp. 3. Hearing. All appeals shall be set for a hearing at the earliest possible date. A notice of such hearing shall be mailed to the claimant and all interested parties in the matter which is being appealed at least ten days before the date of hearing, specifying the time and place of hearing.

Subp. 4. Disqualification of members of appeal tribunals. No member of an appeal tribunal shall participate in the hearing of any appeal in which he has a personal interest.

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Challenges to the personal interest of any member of an appeal tribunal shall be heard and decided by the chairman of the appeal tribunal subject to review by the commissioner.

In the absence of, or disqualification of, an associate member, the chairman shall hear and determine the matter alone.

Subp. 5. Hearing of appeals. All hearings shall be conducted in such manner as to constitute a fair hearing in order to ascertain and determine the substantial rights of the parties, and the appeal tribunals shall not be bound by common law or statutory rules of evidence and procedure. All issues pertaining to the matter on appeal before an appeal tribunal shall be considered and passed upon. The claimant or any other party to an appeal before an appeal tribunal may present such evidence as may be relevant. The members of an appeal tribunal may conduct such examination of the parties and witnesses as may be necessary to ascertain all of the facts relevant to the matter on appeal. All testimony shall be given under oath or affirmation. Upon the hearing of an appeal, an appeal tribunal may, upon its own motion, take such additional evidence as it deems necessary.

The commissioner may in his discretion order any case to be removed from one appeal tribunal to another or to himself for hearing and determination upon notice to the parties pursuant to Minnesota Statutes, section 268.10, subdivision 3, and subpart 3 of this rule.

A claimant or his representative may upon application to the Department of Economic Security secure from its records any information necessary for the proper presentation of such claimant's claim for benefits.

The parties to an appeal, with the consent of the appeal tribunal, may stipulate in writing as to the facts involved. The appeal tribunal may decide the appeal on the basis of such stipulation or, at its discretion, may set the matter for hearing and take such further evidence as it deems necessary to enable it to determine the merits of the claim on appeal.

All testimony adduced at the hearing shall be recorded, but need not be transcribed unless further appeal is taken from the decision of the appeal tribunal.

Subp. 6. Adjournment of hearings. The chairman of an appeal tribunal shall exercise his discretion as to when adjournments of hearings may be granted in order to secure all the evidence that is necessary to determine the matter before him.

If a party fails to appear at the time and place set for hearing, the appeal tribunal may make its findings of fact and decision based upon the evidence available unless it appears to the appeal tribunal that there is good cause for adjournment.

Subp. 7. Determination of appeals. Following the conclusion of the hearing of an appeal, the appeal tribunal shall, within a reasonable time, make its findings of fact and decision in writing which shall be signed by members of the appeal tribunal.

A majority of the appeal tribunal shall be competent to render a decision, and the minority may file a dissent from such decision.

Decisions made by an appeal tribunal shall be filed in the state office of the Department of Economic Security at Saint Paul, Minnesota. Notice of the filing of the appeal tribunal's decision together with a copy of the decision shall be mailed to the claimant and all other parties to the appeal.

Statutory Authority: *MS s 268.021*

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UNEMPLOYMENT COMPENSATION PROCEDURE 3310.3100

3310.3000 APPEAL TO COMMISSIONER.

Any interested party may, within 12 days after the date of mailing to such party a notice of the filing of an appeal tribunal's decision, appeal from such decision and obtain a review thereof by the commissioner.

The party appealing shall file at the employment office where the claim was filed, or at the state office of the Department of Economic Security at Saint Paul, Minnesota, a notice of appeal in writing addressed to the commissioner of the Department of Economic Security, setting forth:

- A. the name, address, and social security account number of the claimant;
- B. reference to the decision from which the appeal is taken;
- C. the fact that an appeal from such decision is being made; and
- D. the grounds upon which such appeal is based.

Such notice of appeal shall be signed by the party appealing. In addition, one copy of such notice of appeal shall be submitted to the Department of Economic Security for each party to the matter on appeal other than the appellant.

All hearings before the commissioner shall be scheduled for the earliest possible date and a notice thereof shall be mailed to all parties to the matter to be heard, at least ten days before the date of hearing, specifying the time and place of hearing.

In hearings on appeals before the commissioner, the arguments shall be limited to the transcribed testimony taken before the appeal tribunal, the exhibits, the law, and the rules adopted by the commissioner, and may be made orally or submitted by written briefs, or both.

Statutory Authority: *MS s 268.021*

3310.3100 APPLICATIONS TO THE COMMISSIONER FOR LEAVE TO TAKE ADDITIONAL EVIDENCE:

The commissioner in his discretion may, prior to or upon the hearing of an appeal before him, or upon application and proper showing made, set aside the findings of fact and decision of the appeal tribunal and remand any matter to the appeal tribunal for the taking of such additional evidence as the commissioner may deem necessary in order to ascertain the substantial rights of the parties to the appeal. Such evidence shall be taken by the appeal tribunal in the manner prescribed for the conducting of hearings on appeal before it. Upon the completion of the taking of additional evidence, the appeal tribunal shall make its findings of fact and decision in writing based upon all of the evidence adduced before it at the original hearing and the hearing to take additional evidence.

Application to the commissioner for leave to take additional evidence shall be filed with the commissioner not later than five days preceding the date of the hearing on appeal upon proper and sufficient showing made setting forth the names of the witnesses who will testify and the substance of the evidence to which they will testify, or if such evidence is of a documentary nature, the original documents or verified copies thereof shall be attached to such application. In addition one copy of such application, affidavits, and documents shall be submitted for each party to the appeal other than the applicant.

Statutory Authority: *MS s 268.021*

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3310.3200 UNEMPLOYMENT COMPENSATION PROCEDURE

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3310.3200 DETERMINATION OF APPEALS.

Following the conclusion of a hearing on appeal, the commissioner shall, within a reasonable time, make his findings of fact and decision in writing.

Decisions made by the commissioner shall be filed in the state office of the Department of Economic Security at Saint Paul, Minnesota. Notice of the filing of the commissioner's decision together with a copy of the decision shall be mailed to the claimant, to all other parties of the appeal, and to members of the appeal tribunal which heard the appeal in the first instance.

Statutory Authority: *MS s 268.021*

3310.3300 REVIEW OF DECISION.

The commissioner's decision is reviewable by the supreme court on writ of certiorari as provided for by Minnesota Statutes, section 268.10, subdivision 8.

Statutory Authority: *MS s 268.021*

3310.3400 EXPERIENCE RATING AND RATE DETERMINATIONS.

Any employer may within 30 days from the date of mailing notice of charges made against his experience rating account because of benefits paid to claimants, or within 30 days from the date of mailing a notice of his experience rating and contribution rate for any calendar year, file with the Department of Economic Security a notice of protest and request for review of such determination. Upon receipt of such notice of protest or request for review, the matter will be reviewed and redetermined and notice thereof given to the employer. This redetermination shall be the final determination of the department unless the employer files an appeal therefrom within ten days from the date of such determination.

Statutory Authority: *MS s 268.021*

3310.3500 APPEAL TO REFEREE.

Subpart 1. Notice of appeal. Any employer may within ten days from the date of mailing of the notice of redetermination file with the Department of Economic Security, Saint Paul, Minnesota 55101, a notice of appeal in writing setting forth:

- A. the name, address, and Minnesota account number of the employer;
 - B. reference to the redetermination from which the appeal is taken;
 - C. the fact that an appeal from such redetermination is being made;
- and
- D. the particular grounds upon which such appeal is based.

The notice of appeal shall be signed by the employer, or his duly authorized representative.

Subp. 2. Hearing. All appeals shall be heard by a referee designated by the commissioner and shall be set for hearing at the earliest possible date and notice of such hearing shall be mailed to the employer at least ten days before the date of hearing, specifying the time and place of such hearing.

Subp. 3. Disqualification of a referee. No referee shall participate in the hearing of any appeal in which he has an interest.

Statutory Authority: *MS s 268.021*

3310.3600 REMOVAL OF CASE FROM ONE REFEREE TO ANOTHER.

The commissioner may in his discretion order any case to be removed from one referee to another or to himself for hearing and determination upon notice to the parties pursuant to Minnesota Statutes, section 268.10, subdivision 3, and part 3310.3500, subpart 2.

Statutory Authority: *MS s 268.021*

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UNEMPLOYMENT COMPENSATION PROCEDURE 3310.3900

3310.3700 APPEAL TO THE COMMISSIONER.

Any employer may within 12 days from the date of mailing a notice to him of the filing of a referee's decision appeal from such decision and obtain a review thereof by the commissioner by filing with the Department of Economic Security, Saint Paul, Minnesota 55101, a notice of appeal in writing setting forth:

- A. the name, address, and Minnesota account number of the employer;
- B. reference to the decision from which the appeal is taken;
- C. the fact that an appeal from such decision is being made; and
- D. the grounds upon which such appeal is based.

Such notice of appeal shall be signed by the employer appealing.

All hearings before the commissioner shall be scheduled for the earliest possible date and a notice thereof shall be mailed to the employer at least ten days before the date of hearing specifying the time and place of hearing.

Statutory Authority: *MS s 268.021*

3310.3800 HEARING OF APPEALS.

Subpart 1. **Procedure.** In hearings on appeals before the commissioner, the arguments shall be limited to the transcribed testimony taken before the referee, the exhibits, the law, and the rules adopted by the commissioner, and may be made orally or submitted by written briefs, or both.

Subp. 2. **Applications to the commissioner for leave to take additional evidence.** The commissioner in his discretion may, prior to or upon the hearing of an appeal before him, or upon application and proper showing made, set aside the findings of fact and decision of the referee and remand any matter to the referee for the taking of such additional evidence as the commissioner may deem necessary in order to ascertain the substantial rights of the parties to the appeal. Such evidence shall be taken by the referee in the manner prescribed for the conducting of hearings on appeal before him. Upon the completion of the taking of additional evidence, the referee shall make his findings of fact and decision in writing based upon all of the evidence adduced before him at the original hearing and the hearing to take additional evidence.

Application to the commissioner for leave to take additional evidence shall be filed with the commissioner not later than five days preceding the date of the hearing on appeal upon proper and sufficient showing made setting forth the names of the witnesses who will testify and the substance of the evidence to which they will testify, or if such evidence is of a documentary nature, the original documents or verified copies thereof shall be attached to such application.

Statutory Authority: *MS s 268.021*

3310.3900 DETERMINATION OF APPEALS.

Following the conclusion of a hearing on appeal, the commissioner shall, within a reasonable time, make his findings of fact and decision in writing.

Decisions made by the commissioner shall be filed in the state office of the Department of Economic Security at Saint Paul, Minnesota 55101.

Notice of the filing of the commissioner's decision together with a copy of the decision shall be mailed to the employer.

Statutory Authority: *MS s 268.021*

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3310.4000 UNEMPLOYMENT COMPENSATION PROCEDURE

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3310.4000 REVIEW OF DECISION.

The commissioner's decision is reviewable by the supreme court on writ of certiorari as provided for by Minnesota Statutes, section 268.10, subdivision 8.

Statutory Authority: *MS s 268.021*

HEARINGS TO DETERMINE LIABILITY

3310.4100 REQUEST FOR A HEARING.

Any employing unit may file an application in writing with the Department of Economic Security requesting a hearing to determine its liability to pay contributions based upon the remuneration paid to an individual or individuals for services performed which contributions the employing unit contends it is not liable to pay, setting forth therein the grounds upon which such contentions are based.

Statutory Authority: *MS s 268.021*

3310.4200 HEARING BEFORE REFEREE.

Upon the filing of such application or upon his own motion, the commissioner may issue an order for such hearing before a referee in accordance with the provisions contained in Minnesota Statutes, section 268.12, subdivision 13.

All such matters shall be heard by a referee designated by the commissioner and shall be scheduled for hearing at the earliest date possible after issuance of such order for hearing. Notice of such hearing, together with a copy of the commissioner's order, shall be served upon the employing unit by registered mail at least ten days before the date of hearing and shall specify the time and place of hearing.

All hearings shall be conducted in such manner as to ascertain and determine the facts in the matter, and the referee shall not be bound by common law or statutory rules of evidence and procedure. The employing unit and the Department of Economic Security may present such evidence as may be relevant. The referee may conduct such examination of the employing unit and other witnesses as may be necessary to ascertain all of the facts relevant to the matter before him. All testimony taken shall be given under oath or affirmation.

All testimony adduced at the hearing shall be recorded but need not be transcribed unless further appeal is taken from the decision of the referee.

Statutory Authority: *MS s 268.021*

3310.4300 ADJOURNMENT OF HEARINGS.

The referee shall exercise his discretion as to when adjournments of a hearing may be granted in order to obtain all the evidence that is necessary to determine the matter before him. If an employing unit fails to appear at the time and place set for hearing, the referee may dismiss the matter or make his findings of fact and decision based upon the evidence available and upon the files and records of the department unless it appears to the referee that there is good and sufficient cause for adjournment.

Statutory Authority: *MS s 268.021*

3310.4400 DETERMINATION OF LIABILITY.

Upon the conclusion of such hearing, the referee shall within a reasonable time make his findings of fact and decision in writing and shall serve upon the employing unit by registered mail a copy of such findings of fact and decision which shall become final unless within ten days of the mailing by registered mail of a copy thereof to the employing unit an appeal is filed with the commissioner.

Statutory Authority: *MS s 268.021*

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3310.4500 HEARING BEFORE THE COMMISSIONER.

The commissioner may on his own motion, within 12 days from the date of mailing to all parties to the hearing before the referee notice of the filing of the referee's findings of fact and decision, order the matter certified to him for review.

Any employing unit which is a party to the hearing may, within ten days from the date of mailing to it of a notice of the filing of the referee's findings of fact and decision together with a copy of such findings and decision, appeal therefrom and obtain a review of such findings and decision by the commissioner by filing with the Department of Economic Security, Saint Paul, Minnesota 55101, a notice of appeal in writing setting forth:

A. the name, address, and Minnesota account number of the employing unit;

B. reference to the decision from which the appeal is taken;

C. the fact that an appeal from such decision is being made; and

D. the grounds upon which such appeal is based.

Such notice of appeal shall be signed by the employing unit so appealing. In addition, one copy of such notice of appeal shall be submitted to the Department of Economic Security for each party to the matter on appeal other than the appellant.

All hearings before the commissioner shall be scheduled for the earliest possible date and a notice thereof shall be mailed to all parties to the matter to be heard, at least ten days before the date of hearing, specifying the time and place of hearing.

In all hearings for review by the commissioner, arguments shall be limited to the transcribed testimony taken before the referee, the exhibits, the law, and the rules relating thereto, and the arguments may be made orally or submitted by written briefs, or both.

Statutory Authority: *MS s 268.021*

3310.4600 APPLICATIONS TO THE COMMISSIONER FOR LEAVE TO TAKE ADDITIONAL EVIDENCE.

The commissioner in his discretion may, prior to or upon the hearing before him, or upon application and proper showing made, set aside the findings of fact and decision of the referee and remand any matter to the referee for the taking of such additional evidence as the commissioner may deem necessary in order to ascertain the substantial rights of the parties to the appeal. Such evidence shall be taken by the referee in the manner prescribed for the conducting of hearings on appeal before him. Upon the completion of the taking of additional evidence, the referee shall make his findings of fact and decision in writing based upon all of the evidence adduced before him at the original hearing and the hearing to take additional evidence.

Application to the commissioner for leave to take additional evidence shall be filed with the commissioner not later than five days preceding the date of the hearing upon proper and sufficient showing made setting forth the names of the witnesses who will testify and the substance of the evidence to which they will testify, or if such evidence is of a documentary nature, the original documents or verified copies thereof shall be attached to such application. In addition, one copy of such application, affidavits, and documents shall be submitted for each party to the appeal other than the applicant.

Statutory Authority: *MS s 268.021*

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3310.4700 DECISION OF THE COMMISSIONER.

Following the conclusion of a hearing before him, the commissioner shall, within a reasonable time, make his findings of fact and decision in writing.

Decisions made by the commissioner shall be filed in the office of the Department of Economic Security, Saint Paul, Minnesota 55101. Notice of such filing together with a copy of the findings of fact and decision shall be mailed by registered mail to all parties to the hearing.

Statutory Authority: *MS s 268.021*

3310.4800 REVIEW OF DECISION.

The commissioner's decision is reviewable by the district court on writ of certiorari as provided for by Minnesota Statutes, section 268.12, subdivision 13, clause (4).

Statutory Authority: *MS s 268.021*

GENERAL PROVISIONS APPLICABLE TO ALL HEARINGS

3310.4900 ISSUANCE OF SUBPOENAS.

Subpoenas to compel the attendance of witnesses or the production of records in any proceeding before a referee, appeal tribunal, or the commissioner shall be issued by the referee, chairman of an appeal tribunal, or the commissioner upon a showing being made of the necessity therefor by the party applying for the issuance of the subpoenas.

Witnesses subpoenaed for any hearing before a referee, appeal tribunal, or the commissioner shall be paid witness and mileage fees by the Department of Economic Security in accordance with the following schedules: for attending hearings: \$1 each day; for travel in going to and returning from the place of attendance, mileage figured from his residence; if within the state, or from the boundary line of the state where he crossed the same, if without the state: six cents per mile.

Statutory Authority: *MS s 268.021*

3310.5000 REPRESENTATION BEFORE A REFEREE, APPEAL TRIBUNALS, AND THE COMMISSIONER.

Any individual may appear for himself in any proceeding before a referee, an appeal tribunal, or the commissioner. Any partnership may be represented by any of its members or any duly authorized representative. Any corporation or association may be represented by an officer or any duly authorized representative.

The commissioner, in his discretion, may refuse to allow any person to represent others in any proceeding before him or any of his duly authorized representatives who is unethical in his conduct or who intentionally and repeatedly fails to observe the provisions of the Minnesota employment security law or the rules and instructions of the commissioner, chairman of an appeal tribunal, referee, or any duly authorized representative of the commissioner. Every hearing shall be conducted with decorum and in an orderly manner.

Statutory Authority: *MS s 268.021*

3310.5100 WITHDRAWAL OF NOTICE OF APPEAL.

Any person having filed a notice of appeal from a determination or decision on any issue may withdraw the same by filing with the Department of Economic Security a written notice thereof at any time prior to the hearing on the matter. Whereupon the referee, appeal tribunal, commissioner or his representative before whom such matter is pending shall issue its or his order in writing dismissing said appeal, and the said determination or decision with respect to

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which the appeal was initiated shall have the same force and effect as if such notice of appeal had not been filed.

Statutory Authority: *MS s 268.021*

3310.5200 DECISIONS ON FILE.

The original decisions of referees, appeal tribunals, and the commissioner shall be kept on file at the state office of the Department of Economic Security at Saint Paul, Minnesota.

Statutory Authority: *MS s 268.021*

3310.5300 COPIES MADE OF DECISIONS.

Copies of all decisions pursuant to hearing by the commissioner, appeal tribunals, and referees involving claims for benefits, employers' experience rating, and employers' liability will be mailed currently for the period of one year to any person residing within this state upon payment of \$10 in advance and to any person residing within the United States but not within this state upon payment of \$15 in advance. Individual copies of such decisions, if available, will be mailed to any person requesting the same upon payment in advance of ten cents per copy.

Copies will be mailed to public libraries and other public agencies upon request, without cost.

Statutory Authority: *MS s 268.021*

CLAIMS FOR EXTENDED BENEFITS

3310.5400 CLAIM MADE IN PERSON.

Any individual in order to establish entitlement to extended benefits under the provisions of Minnesota Statutes, section 268.07, subdivision 2, shall report in person to the Minnesota Department of Economic Security at one of its local employment service offices and shall there file a claim for such benefits on a form prescribed by the commissioner. If such individual resides in an area in which the department does not maintain local employment service offices, his claim for benefits may be filed by mail in accordance with the procedures prescribed in parts 3310.1500 to 3310.2200. Such claim shall become effective as of the Sunday of the week in which filed, provided that said claim may be retroactive to the Sunday of the week immediately following the week which exhausted regular benefit entitlement if the failure to file earlier was with good cause.

Statutory Authority: *MS s 268.021*

3310.5500 COMMISSIONER ACTION UPON REQUEST FOR CLAIM.

Upon receipt of a claim for extended benefits, the commissioner shall:

A. Request information from employers and training facilities as necessary to verify qualifying employment, credit weeks, and training. If any employer or training facility fails to provide information within seven days from the date requested, a certification may be filed by said individual setting forth necessary information, and his entitlement may be determined on the basis of this and any other available information. In absence of fraud, if a redetermination based on a late report cancels the claimant's entitlement, the claimant shall not be required to make repayment to the fund of any benefits paid prior to such redetermination.

B. Determine whether the claimant has either enrolled in or has completed an approved course of training or retraining.

An individual shall be deemed enrolled during any period in which he has been accepted in an approved training course and said course has not been

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completed or otherwise terminated. Enrollment during any portion of a week shall qualify the individual for a full week of benefits provided he is otherwise eligible.

An individual shall be deemed to have completed a training course when he has either satisfactorily completed the requirements of a course of training or if terminated prior to completion, it has been determined that the individual has attained an employability level whereby he may reasonably be expected to obtain employment and perform satisfactorily on the job.

A course of training or retraining shall be deemed appropriate and approved for the purpose of establishing entitlement to extended benefits if:

(1) the training or retraining is under a state-federal training program previously approved by the commissioner or in absence of such prior approval if

(2) the training is a planned and systematic sequence of instructions conducted under competent supervision on an individual or group basis leading to a bona fide occupational objective for which there is reasonable expectation of employment.

The above provisions notwithstanding, no course of training or retraining completed more than ten years prior to the benefit year shall be deemed appropriate for extended benefit purposes.

C. Issue a determination on rights to extended benefits and deliver or mail a notice thereof to the claimant. Said determination may be appealed in the manner prescribed in parts 3310.2700 to 3310.3300.

Statutory Authority: *MS s 268.021*

3310.5600 CONTINUED APPEARANCE TO RECEIVE CLAIM.

Any individual in order to claim weekly benefits shall continue to report in person in accordance with the instructions of the local employment service office provided that the continued claim may be filed by mail if the commissioner finds it impractical for him to report at the office as specified.

Statutory Authority: *MS s 268.021*

3310.5700 PAYABLE IN AMOUNT AND TERMS OF REGULAR BENEFITS.

An individual's extended benefit amount shall be payable in the same amount and under the same terms and conditions as if his entitlement were for regular benefits payable under the provisions of Minnesota Statutes, sections 268.03 to 268.25, provided that an individual shall not be deemed unavailable for work by reason of his enrollment in training.

Statutory Authority: *MS s 268.021*

3310.5800 PAYMENT OF BENEFITS TO INDIVIDUALS IN APPROVED TRAINING.

Subpart 1. **Scope.** This part shall govern the Minnesota Department of Economic Security in its administration of Minnesota Statutes, sections 268.08 and 268.09, as they relate to payment of benefits to persons in approved training.

Subp. 2. **Approval of training course.** An individual's enrollment in a training course shall be approved for the purposes of Minnesota Statutes, sections 268.08 and 268.09 if the commissioner finds that:

A. reasonable and suitable work opportunities for which the individual is fitted by training, experience, and physical capabilities do not exist in his locality;

B. the training course is commensurate with the individual's abilities and is designed to prepare him for available employment;

C. the training is conducted by an agency, educational institution, or employing unit which has been approved by the Minnesota State Department of Education to conduct training programs. Provided, however, that any agency,

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educational institution, or employing unit which is not subject to regulation and approval by the State Department of Education may be approved by the commissioner if he finds that the curriculum, facilities, staff, and other essentials are adequate to achieve the training objective;

D. the training is vocational in nature or short-term academic training vocationally directed to an occupation or skill for which there are or are expected to be reasonable work opportunities available to the individual;

E. the training program consists of at least 25 hours per week of supervised activity.

Subp. 3. **Conditions to meet for benefits.** An individual who is otherwise eligible under the provisions of Minnesota Statutes, sections 268.03 to 268.24 shall not be denied benefits for any week in which he is enrolled in an approved training course if the following conditions, and each of them, are met:

A. he has filed a claim on a form prescribed by the commissioner;

B. a duly designated person connected with the training course has certified that the individual has been making satisfactory progress in the course; and

C. he has maintained satisfactory progress and attendance provided that his weekly benefit amount shall be reduced by one-fifth for each day of unexcused absence from training.

Statutory Authority: *MS s 268.021*