

CHAPTER 3315
DEPARTMENT OF EMPLOYMENT AND ECONOMIC
DEVELOPMENT
EMPLOYER TAXES

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3315.0100 [Repealed, L 2004 c 206 s 53]

WAGES

3315.0200 PURPOSE.

Subpart 1. **Scope.** Parts 3315.0200 to 3315.0220 further define “wages” as defined in Minnesota Statutes, section 268.035, subdivision 29, and used in Minnesota Statutes, sections 268.03 to 268.24; this chapter; interpretations; forms; and other official pronouncements issued by the department.

Subp. 2. [Repealed, 13 SR 1057]

Subp. 3. [Repealed, 13 SR 1057]

Subp. 4. [Repealed, 13 SR 1057]

Statutory Authority: *MS s 14.386; 14.388; 268.021*

History: *13 SR 1057; 31 SR 285*

3315.0202 [Repealed, L 2004 c 206 s 53]

3315.0203 WAGES PAYABLE, CORPORATE OFFICERS.

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

Statutory Authority: *MS s 14.386; 14.388; 268.021*

History: *13 SR 1057; 31 SR 285*

3315.0210 TYPES OF WAGES, GENERALLY.

Wages include the monetary value of:

A. Dwelling unit rent, utilities, meals, exchange of services, or other goods or services that are to compensate for an employee’s services.

B. Vacation pay or payment in lieu of vacation.

C. Termination, severance, or dismissal payment or payment in lieu of notice whether notice is required or not.

D. That portion of the payment which compensates for services rendered received in the form of an award or allowance in accordance with a contractual agreement or settlement reached through any arbitrator, regulatory agency, or court.

E. Any payments made by a subchapter "S" corporation to or on behalf of officers and shareholders which is reasonable compensation for services performed for the corporation and which the department must treat as wages for tax purposes, except as provided in subitems (1) to (5). An "S" corporation is a corporation that is organized under the rules of subchapter S of the Internal Revenue Code of 1986.

"Wages" does not include:

(1) a distribution of earnings and profits which is in excess of any payment treated as wages as defined in this item;

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

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

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

(5) a reasonable lease or rental payment to an officer who owns property which is leased or rented to the corporation.

F. The value of any consideration, award, bonus, or prize which accrues before separation from employment.

G. Payments for accrued sick leave when not related to a specific absence due to sickness or injury, regardless of whether or not the employer maintains a sick pay plan as defined in Minnesota Statutes, section 268.035, subdivision 29.

H. Idle time or standby compensation paid by an employer for a guaranteed minimum number of hours of employment per week when employees are to be available for a specific period of time and payment is made to them for idle time even if they do not render services for the minimum number of hours.

I. Advances or draws against future earnings, when paid, unless the payments are designated as a loan or return of capital on the books of the employer at the time of payment.

J. Payments to corporate shareholders or officers, who perform services for the corporation for wages below that which would approximate reasonable compensation for services, although designated as loans, unless the loan is evidenced by a note or other legal document, the loan is for business purposes, repayments are made pursuant to a payoff schedule, and the agreement provides for the payment of reasonable interest.

K. Payments made directly or indirectly to an individual to perform or assist in performing the work of any employee of the employer provided that the employer had actual or constructive knowledge that the work was being performed.

L. Payments made for services as a caretaker. Unless there is a contract or other proof to the contrary, compensation is considered as being equally received by a married couple where the employer makes payment to only one spouse, or by all tenants of a household who perform services where two or more individuals share the same dwelling and the employer makes payment to only one individual.

M. Payments made for services by a migrant family. Where services are performed by a married couple or a family and an employer makes payment to only one individual each worker is considered as having received an equal share of the compensation unless there is a contract or other proof to the contrary.

N. An employer's vehicle furnished to an employee to the extent the vehicle is used for personal purposes. If the employee has use of the vehicle without charge, the amount

deemed to be wages is \$200 per month or, if for less than a calendar month, \$7 for each day that the employee has use of the vehicle for personal purposes. If the employee reimburses the employer for the use of the vehicle, the amount deemed to be wages must be determined as follows:

(1) if the employee reimburses the employer at an established rate of less than 20 cents per mile for each mile of personal use, the amount deemed to be wages is the difference, if any, between the amount reimbursed and 20 cents per mile; or

(2) if the employee reimburses the employer at an established daily, weekly, or monthly rate, the amount deemed to be wages is the difference, if any, between the amount reimbursed and \$200 per month or, if for less than a month, \$7 for each day that the employee has use of the vehicle for personal purposes.

O. Payments made for an unexpired portion of an employment contract.

Statutory Authority: *MS s 14.386; 14.388; 268.0122; 268.021*

History: *13 SR 1057; 20 SR 197; L 1997 c 66 s 80; 31 SR 285*

NOTE: This part is repealed effective September 30, 2007, by Laws 2007, chapter 128, article 4, section 6.

3315.0211 TIPS AND GRATUITIES AS WAGES.

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

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

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

- A. received directly from the customer;
- B. distributed from a tip pool, whether controlled by the employer or employees;

or

C. received as part of a plan or system under which the person initially receiving them, whether directly from the customer or from a tip pool, distributes a portion of the tips to other employees.

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

Statutory Authority: *MS s 268.021*

History: *13 SR 1057*

3315.0212 EMPLOYEE EQUIPMENT AND VEHICLES.

Subpart 1. **Trucks, bulldozers, tractors.** The compensation of the operator and supplier of a bulldozer, tractor, or similar equipment, and trucks other than truck owner-operators excluded under part 3315.0525, whose compensation includes wages for personal services as well as the cost of operating and hiring the equipment are wages unless the amount attributable to wages is separately identified either by making separate payments; or, if both wages and equipment hire are combined in a single payment, by a prearranged written agreement or by specifically indicating the separate amounts at the time of each payment.

Subp. 2. **Advances or reimbursements as wages.** Payments to an employee that include advances or reimbursements for use of a personal vehicle of up to 9,000 pounds gross vehicle weight in the employer's business are wages unless the amount attributable to the use of the vehicle is separately paid or stated as prescribed in part 3315.0220, item H and the advance or reimbursement is not unreasonable or arbitrary in which case only the amount attributable to services performed is wages.

Subp. 3. **Commissioner determination of wages.** If the commissioner finds that the wage determination of the equipment operators or employees who use their personal ve-

hicles in the employer's business prescribed by subparts 1 and 2 would be unreasonable or arbitrary in a particular case, then the commissioner must determine the amount of the wages of the employee involved.

Statutory Authority: *MS s 14.386; 14.388; 268.021*

History: *13 SR 1057; 17 SR 1279; 31 SR 285*

3315.0213 NONCASH WAGES.

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

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

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

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

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

Statutory Authority: *MS s 14.386; 14.388; 268.021*

History: *13 SR 1057; 31 SR 285*

3315.0220 EXEMPT WAGES.

Except as provided under Minnesota Statutes, section 268.035, subdivision 29, the term "wages" does not include:

A. the value of any special discount or markdown allowed to an employee in goods purchased from or services supplied by the employer where the purchases are optional and do not constitute regular or systematic payment for services rendered;

B. customary and reasonable directors' fees paid to individuals who are not otherwise employed by the corporation of which they are directors;

C. money allowed to employees for reimbursement of meal expenses when employees are required to perform work after their regular hours;

D. payment into a trust or plan for purposes of providing legal or dental services if provided for all employees generally or for a class or classes of employees;

E. the value of parking facilities provided or paid for by an employer, in whole or in part, if provided for all employees generally or for a class or classes of employees;

F. compensation, reimbursement, fees, meals, or other payments paid or provided through a court to an individual for services performed as a juror;

G. royalties to an owner of a franchise, license, copyright, patent, oil, mineral, or other right;

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

I. compensation paid to radio and television artists which represents residual payments and which is accrued subsequent to the production of musical jingles, spot announcements, radio transcriptions, and film sound tracks; or

J. any payment to or on behalf of an employee under a plan or system established by an employer, which makes provisions for employees generally or for a class or classes of

employees for the supplementation of unemployment benefits under the written terms of an agreement, contract, trust arrangement, or other instrument if the plan or system provides benefits which are only supplemental to, and does not replace or duplicate any state or federal unemployment compensation. The plan or system must provide that funds are to be used solely for the supplementation of state unemployment benefits. Potential recipients of the plan or system must be required to file for unemployment benefits in accordance with state law. The plan or system may not allow the assignment of benefits or the payment of any consideration in lieu of any benefit upon the employee's withdrawal from the plan or system, or termination of employment or the termination of the plan or system. The plan or system must not be designed for the purpose of avoiding the payment of unemployment benefit taxes on money disbursed from its plan or system.

Statutory Authority: *MS s 14.386; 14.388; 268.021*

History: *13 SR 1057; L 1997 c 66 s 80; L 1999 c 107 s 66; L 2000 c 343 s 4; 31 SR 285*

NOTE: This part is repealed effective September 30, 2007, by Laws 2007, chapter 128, article 4, section 6.

3315.0300 [Renumbered 3315.0211]

3315.0400 [Renumbered 3315.0213]

3315.0500 [Renumbered 3315.0212]

EMPLOYMENT

3315.0501 DEFINITIONS.

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

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

Subp. 3. [Repealed, L 2004 c 206 s 53]

Subp. 4. [Repealed, L 2004 c 206 s 53]

Subp. 5. [Repealed, L 2004 c 206 s 53]

Statutory Authority: *MS s 268.021*

History: *13 SR 1057; L 2004 c 206 s 53*

3315.0510 [Repealed, L 2004 c 206 s 53]

3315.0515 AGENT-DRIVERS AND SALESPERSONS.

Subpart 1. **Statutory employees.** Certain classes of agent-drivers, salespersons, and commission persons are statutory employees even though they are independent contractors under common law rules. Minnesota Statutes, section 268.035, subdivision 15, clause (4), sets forth the conditions which must be present for members of each class to be employees.

Subp. 2. **Full time.** In the case of a traveling or city salesperson, other than an agent-driver or commission-driver, Minnesota Statutes, section 268.035, subdivision 15, clause (4), provides that the individual must be engaged on a full-time basis. "Full time" means the number of hours in the calendar week during which individuals engaged in the same or similar occupations usually or customarily perform services, except that any week during which an individual worked 40 hours or more providing those services are deemed to be full time.

Subp. 3. **Substantial investment in facilities.** Agent-drivers, commission-drivers, and traveling or city salespersons to be employees must not have a substantial investment in facilities, other than facilities for transportation, used in connection with the performance of the services.

"Facilities" means equipment or premises necessary to perform the work. Inventory, clothing, and items not actually required to adequately perform the assigned tasks are not facilities.

“Substantial investment” refers to a monetary investment representing something of considerable worth in relation to the overall investment requirements in the distribution or sale of the particular product involved.

Statutory Authority: *MS s 14.386; 14.388; 268.021*

History: *13 SR 1057; 31 SR 285*

NOTE: This part is repealed effective September 30, 2007, by Laws 2007, chapter 128, article 4, section 6.

3315.0520 EMPLOYMENT, GENERAL INCLUSIONS.

The services described in items A to C are considered to be in employment:

A. Services performed by an employee as an insurance agent, insurance solicitor, or real estate salesperson for the pay period in which payments for the services not constituting commissions were paid or became due and payable. The exclusionary provisions of Minnesota Statutes, section 268.035, subdivision 20, clauses (26) and (29), apply to services which require a Minnesota real estate or insurance agent’s sales license and to those individuals, except corporate officers, possessing the license. Services of corporate officers, who are employees by statute, are not considered in the application of this exclusionary provision. Noncommission compensation includes guaranteed salary, training allowance, bonus, and draws or advances against future earnings as described in part 3315.0210, item I. For the purpose of this item commission means compensation paid to individuals as a direct result of a sale, including the percentage of the sale price paid to the salesperson responsible for the sale, and payments including overrides, listing fees, and closing fees which are related to the sale.

B. Services performed as election judges.

C. Services performed by factory demonstrators who are placed by a manufacturer or distributor in stores and other locations to aid in the sale of products, who are hired by, who are paid directly or indirectly by, and who work under the direction of the manufacturer or distributor, although this direction may be delegated to the retailer, are in the employment of the manufacturer or distributor making the placement. If the retailer, not acting as an agent for the manufacturer or distributor, hires, directs, and pays the demonstrator directly, the retailer is the employer. If the wages are paid in part by the manufacturer or distributor, and in part by the retailer, the demonstrator is in the employment of both. Each is required to pay taxes on the part of the compensation which it pays, provided that it is an employer under Minnesota Statutes, sections 268.03 to 268.24. If the demonstrator is referred to the job through a placement agency that is in the business of providing demonstrators to clients, the placement agency is the employer unless the placement agency neither pays nor receives, directly or through an agent, the salary or wages of the demonstrator, but is compensated on a fee basis by the demonstrator or the client for whom the service is performed.

Statutory Authority: *MS s 14.386; 14.388; 268.021*

History: *13 SR 1057; L 1997 c 66 s 80; 31 SR 285*

NOTE: This part is repealed effective September 30, 2007, by Laws 2007, chapter 128, article 4, section 6.

3315.0525 EMPLOYMENT, SPECIAL EXCLUSION.

In the trucking industry, an owner–operator of a vehicle which is licensed and registered as a truck, tractor, or truck–tractor by a governmental motor vehicle regulatory agency is an independent contractor, not an employee, while performing services in the operation of his or her truck, if each of the following factors is substantially present:

A. the individual owns the equipment or holds it under a bona fide lease arrangement;

B. the individual is responsible for the maintenance of the equipment;

C. the individual bears the principal burdens of the operating costs, including fuel, repairs, supplies, vehicle insurance, and personal expenses while on the road;

D. the individual is responsible for supplying the necessary personal services to operate the equipment;

E. the individual’s compensation is based on factors related to the work performed including a percentage of any schedule of rates or lawfully published tariff and not on the basis of the hours or time expended;

F. the individual generally determines the details and means of performing the services, in conformance with regulatory requirements, operating procedures of the carrier, and specifications of the shipper; and

G. the individual enters into a contract that specifies the relationship to be that of an independent contractor and not that of an employee.

Statutory Authority: *MS s 268.021*

History: *13 SR 1057*

NOTE: This part is repealed effective September 30, 2007, by Laws 2007, chapter 128, article 4, section 6.

3315.0530 EMPLOYMENT, GENERAL EXCLUSIONS.

Subpart 1. [Repealed, L 2004 c 206 s 53]

Subp. 2. **Ministers and members of religious orders.** Minnesota Statutes, section 268.035, subdivision 20, clause (8), excludes from employment the service of a minister in the exercise of his or her ministry and services performed by members of religious orders when the services are required by their order. The term “exercise of his or her ministry” includes:

A. the conduct of religious worship and the ministration of sacerdotal functions;

B. services performed in the control, conduct, and maintenance of:

(1) a religious organization under the authority of a religious body constituting a church or church denomination; or

(2) an organization operated as an integral agency of a religious organization or of a church or church denomination;

C. services performed for an organization described in Minnesota Statutes, section 268.035, subdivision 20, clauses (7) and (8), under an assignment or designation by a church. This does not include cases in which a church merely helps a minister by recommending the minister for a position involving nonministerial services for an organization not connected with the church; and

D. missionary service or administrative work in the employ of a missionary organization.

As used in item B, “control, conduct, and maintenance” of an organization does not include services such as operating an elevator, or being a janitor, but includes services performed in the directing, management, or promotion of the activities of the organization. Accordingly, service of a member of the clergy as a chaplain and the services of members of a teaching or nursing order who are engaged in teaching or nursing are excluded. In the case of a member of a religious order, the criterion to determine if the employment is excluded is whether the order requires the performance of the services.

Subp. 3. **Convention or association of churches.** Minnesota Statutes, section 268.035, subdivision 20, clause (7), provides that service performed in the employ of a church or convention or association of churches is excluded from employment. “Convention or association of churches” means a formal or informal group of churches whose purpose is concerned with religious and denominational matters of the group represented.

Subp. 4. **Policy-making or advisory positions with the state of Minnesota, its instrumentalities, and political subdivisions.** Minnesota Statutes, section 268.035, subdivision 20, clauses (15) and (16), excludes from employment services performed for the state of Minnesota, its instrumentalities, and political subdivisions if performed by an individual in a policy-making position that ordinarily does not require more than eight hours per week in the performance of the duties; or in a major nontenured policy-making or advisory position and that, if performed for the state of Minnesota, is in the unclassified service. The word “major” in the phrase “major nontenured policy-making or advisory position” refers to high level governmental positions usually filled by appointment by the chief executive or the executive’s designee. An individual in a policy-making position is one who determines the direction, emphasis, and scope of action in the development and the administration of governmental programs. An individual in an advisory position is one who advises governmental agencies and officers with respect to policy, program, and administration without having authority to implement its recommendations. For the state of Minnesota and political subdivisions

that do not have authority to enact ordinances without recourse to the state legislature, the position must be designated as policy-making or advisory by state law or local ordinance enacted under state law. Political subdivisions may enact an ordinance creating or designating one of its positions as policy-making or advisory, provided the ordinance is under authority of the laws of the state. If a law or ordinance does not clearly and specifically so label a position, other pertinent factors used in determining whether a position is advisory or policy-making include:

- A. job descriptions;
- B. qualifications required of individuals for the position; and
- C. responsibilities involved.

The most important factor in the application of Minnesota Statutes, section 268.035, subdivision 20, is whether a particular position is designated as a major nontenured policy-making or advisory position under state law. If an agency or department is covered by a merit system, the provisions of this exclusion apply only to individuals that are nontenured. "Nontenured" means that the position is not covered by a merit system or civil service law or rules with respect to duration of service or appointment.

Subp. 5. Temporary employees hired for emergencies. Minnesota Statutes, section 268.035, subdivision 20, clause (13), applies to employees who are pressed into service during an existing or imminent emergency. The exclusion does not apply to any services performed in the prevention or detection of a disaster nor to permanent employees, such as volunteer firefighters whose usual responsibilities include emergency situations.

Subp. 6. Students employed by school, college, or university. Minnesota Statutes, section 268.035, subdivision 20, clause (20), excludes from employment the services of students in the employ of a school, college, or university if the student is enrolled and is regularly attending classes at the school, college, or university. "Regularly attending classes" means meeting the minimum attendance required for a student's course of study in pursuit of a degree and that the course of study is not by correspondence, part of an extension course, or a continuing education course required by an employer as a condition to employment.

Statutory Authority: *MS s 14.386; 14.388; 268.021*

History: *13 SR 1057; 17 SR 1279; L 2004 c 206 s 53; 31 SR 285*

NOTE: Subparts 2, 3, 4, 5, and 6 are repealed effective September 30, 2007, by Laws 2007, chapter 128, article 4, section 6.

3315.0535 [Repealed, L 2004 c 206 s 53]

3315.0540 PREVIOUSLY EXCLUDED EMPLOYMENT.

If within a calendar year an individual's services and compensation should no longer be excluded because the employer has met the employment or wage requirement for that individual's class of workers, all of the previously excluded employment for that class within the same calendar year is subject to the provisions of Minnesota Statutes, sections 268.03 to 268.24. The previously excluded wages for all workers in that class of employment are reportable in the calendar quarters in which the wages were paid or were due and payable.

Statutory Authority: *MS s 14.386; 14.388; 268.021*

History: *13 SR 1057; 17 SR 1279; 31 SR 285*

NOTE: This part is repealed effective September 30, 2007, by Laws 2007, chapter 128, article 4, section 6.

3315.0545 [Repealed, L 2004 c 206 s 53]

3315.0550 MULTISTATE EMPLOYMENT.

Subpart 1. Localized employment. If an employee works in more than one state, it is necessary to determine if the employment is localized in and reportable to Minnesota. In making this determination, only the employee's regular services are to be considered. "Regular" services refers to the primary duties of the employee. For example, a salesperson's regular duties are limited to services directly involved in selling, so a salesperson's regular duties do not include commuting. An employee's services are considered localized in Minnesota in any calendar quarter in which 80 percent or more of his or her regular services are performed in Minnesota.

Regular services include those services performed in an office located in the home of the employee if all of the following conditions are met: the employer does not provide other facilities; the office meets the requirements of the Internal Revenue Code of 1986 for the deduction of business related expenses; and the services performed are an integral part of the employee's regular duties.

Nonregular services include:

A. attending periodic meetings or returning to one's residence which is located outside his or her area or territory, by salespersons or others who normally perform services within a given area or territory; and

B. any other services which are apart from or not a permanent part of an employee's regular duties, are temporary or transitory in nature, or are incidental to an employee's regular duties.

Subp. 2. Multistate worker. When an individual's services are not localized, and absent any reciprocal agreement provided for in Minnesota Statutes, section 268.042, subdivision 4, the employee is a "multistate" worker and the application of the tests listed in subparts 3 to 6 is required, to determine whether the services are reportable to Minnesota.

Subp. 3. Base of operations. If an individual's services are not localized in any state and some services, other than those determined to be nonregular, are performed in Minnesota and the base of operations is in Minnesota, the employee's entire services are reportable to Minnesota. "Base of operations" means the place, usually permanent in nature, from which the employee starts his or her work, to which he or she customarily returns, and to which the employer may direct instructions to the employee. A branch office of the employer or the place of residence of the employee could be a base of operations.

Subp. 4. Direction and control. If an individual's services are not localized in any state and the base of operations test does not apply, all of the services are reportable to Minnesota if Minnesota is the state from which the employer exercises general direction and control over the employee, and if some services, other than those determined to be nonregular, are performed in Minnesota.

Subp. 5. Residence. If an individual's services are not localized within any state and the base of operations and the direction and control tests do not apply, the individual's entire services are reportable to Minnesota if the individual's residence is located in Minnesota and some services, other than those determined to be nonregular are performed in Minnesota.

Subp. 6. Service not covered under laws of any other state or Canada. If subparts 3 to 5 do not apply, and the individual's services are not covered under the laws of any other state or Canada, the services are covered under Minnesota Statutes, sections 268.03 to 268.24 if the services are directed and controlled from Minnesota.

Statutory Authority: *MS s 14.386; 14.388; 268.021*

History: *13 SR 1057; 31 SR 285*

NOTE: This part is repealed effective September 30, 2007, by Laws 2007, chapter 128, article 4, section 6.

3315.0555 DETERMINING WORKER STATUS.

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

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

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

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

Subp. 2. **Additional factors considered.** Additional factors to be considered are those listed in items A to H.

A. Availability to public. That an individual makes services available to the general public on a continuing basis is usually indicative of independent status. An individual may offer services to the public in a number of ways including having an office and assistants, displaying a sign in front of the home or office, holding a business license, having a listing in a business directory or a business listing in a telephone directory, or advertising in a newspaper, trade journal, or magazine.

B. Compensation on job basis. A person working in employment is usually paid by the hour, week, or month. Payment on a job basis is customary where the worker is independent. Payment by the job may include a predetermined lump sum which is computed by the number of hours required to do the job at a fixed rate per hour or periodic partial payments based upon a percent of the total job price or the amount of the total job completed. The guarantee of a minimum salary or the granting of a drawing account at stated intervals with no requirement for repayment of the excess over earnings indicates the existence of employment.

C. Realization of profit or loss. An individual who is in a position to realize a profit or suffer a loss as a result of the individual's services is generally independent, while the individual who is working in employment is not in that position.

D. Obligation. An individual working in employment usually has the right to end the relationship with an employer at any time the individual wishes without incurring liability, although the individual may be required to provide notice of termination for some period in advance of the termination. An independent worker usually agrees to complete a specific job. An independent worker is responsible for its satisfactory completion and is liable for failure to complete the job.

E. Substantial investment. A substantial investment by a person in facilities used by the person in performing services for another tends to show an independent status. The furnishing of all necessary facilities by the employer tends to indicate the absence of an independent status. Facilities include equipment or premises necessary for the work, but not tools, instruments, clothing, and similar items that are provided by individuals working in employment as a common practice in their particular trade. A substantial expenditure of time or money for an individual's education is not necessarily indicative of an independent relationship. Substantial investment means a monetary investment representing something of considerable worth, in relation to the overall requirements of the person's chosen profession, trade, occupation, or vocation.

F. Simultaneous contracts. If an individual works for a number of persons or firms at the same time, it indicates an independent status because the worker is usually free from control by any of the firms. It is possible that a person may work for a number of people or firms and still be an employee of one or all of them.

G. Responsibility. An employer is usually responsible for the negligence, personal behavior, and work actions of a person working in employment in contacts with customers and the general public during times that the person is performing services for the employer. An independent worker is usually accountable for his or her own actions.

H. Services in the course of the employer's organization, trade, or business. Services that are in the course of the employer's organization, trade, or business consist of services which are a part or process of the employer's organization, trade, or business and ancillary or incidental services. Services which are a part or process of the employer's trade or business are generally performed by individuals in employment. Therefore, it is a consideration in determining the status of an individual. This consideration, as with all other considerations, is not a sole determinative factor. "Part" and "process" are not synonymous. Process refers to those services which directly carry out the fundamental purposes for which the organization, trade, or business exists, for example, painting and repairing automobile bodies in an automobile body paint and repair shop. Part refers to any other services which are essential to the operation or maintenance of the organization, trade, or business, for example, routine cleaning of premises and maintenance of tools, equipment, and buildings. Ancillary or incidental services include landscaping the areas around an automobile body paint and

repair shop. Other services that meet the part, process, or ancillary classification are those services in connection with purchasing, receiving, storing, pricing, displaying, selling, and delivery of merchandise and housekeeping services required for the safety and comfort of customers and the general public or to maintain the premises in a manner as to promote business.

Subp. 3. **Determination of control.** Items A to M describe criteria for determining if the employer has control over the method of performing or executing services. The total circumstances must be considered to determine if control is present.

A. Authority over assistants. Control over the individual is indicated when the employer hires and pays the individual's assistants and supervises the details of the assistant's work.

B. Compliance with instructions. Control is indicated when an individual is required to comply with detailed instructions about when, where, and how to work including the order or sequence in which the service is to be performed. Mere suggestions as to detail or necessary and usual cooperation where the work furnished is part of a larger undertaking, does not normally evince control. Some individuals may work without receiving instructions because they are highly proficient in their line of work; nevertheless, the control factor is present if the employer has the right to instruct or direct the methods for doing the work and the results achieved. Instructions may be oral or may be in the form of manuals or written procedures which show how the desired result is to be accomplished. However, instructions required by state or federal law or regulation or general instructions passed on by the employer from a client or customer, generally does not evince control.

C. Oral or written reports. Control is indicated if regular oral or written reports relating to the method in which the services are performed must be submitted to the employer. Periodic reports relating to the accomplishment of a specific result may not be indicative of control if, for example, the reports are used to establish entitlement to partial payment based upon percentage of completion of a job, or the reports are needed to determine compliance with the terms of a contract. Completion of receipts, invoices, and other forms customarily used in the particular type of business activity or required by law does not constitute written reports.

D. Place of work. Doing the work on the employer's premises is not control in itself; however, it does imply that the employer has control, especially when the work could be done elsewhere. When work is done off the premises it does indicate some freedom from control; however, in some occupations, the services are necessarily performed away from the premises of the employer and are still considered to be in employment.

E. Personal performance. Control is indicated if the services must be personally rendered to the employer. Personal performance of a very specialized work, when the worker is hired on the basis of professional reputation, as in the case of a consultant known in the academic and professional circles to be an authority in the field, is a less reliable indicator of control. Lack of control may be indicated when an individual has the right to hire a substitute without the employer's knowledge or consent.

F. Existence of a continuing relationship. The existence of a continuing relationship between an individual and the person for whom an individual performs services is a factor tending to indicate the existence of an employer-employee relationship. Continuing services may include work performed at frequently recurring, though somewhat irregular intervals, either on call of the employer or whenever work is available.

G. Right to discharge. The right to discharge is a very important factor indicating that the right to control exists particularly if the individual may be terminated with little notice, without cause, or for failure to follow specified rules or methods. An independent worker generally cannot be terminated without the firm being liable for damages if he or she is producing according to his or her contract specifications. Contracts which provide for termination upon notice or for specified acts of nonperformance or default are not solely determinative of the right to control. That a right to discharge is restricted because of a contract with a labor union or with other entities does not mean there is no control.

H. Set hours of work. The establishment of set hours of work by the employer indicates control. Where fixed hours are not practical because of the nature of the occupation, a requirement that the worker work at certain times is an element of control.

I. Training. Training of an individual by an experienced employee working with the individual, by required attendance at meetings, and by other methods, is a factor of control especially if the training is given periodically or at frequent intervals.

J. Amount of time. If the worker must devote full time to the activity, control is indicated. Full time does not necessarily mean an eight-hour day or a five- or six-day week. Its meaning may vary with the intent of the parties, the nature of the occupation and customs in the locality. Full-time services may be required even though not specified in writing or orally. For example, a person may be required to produce a minimum volume of business which compels the person to devote all working time to that business, or the person may not be permitted to work for anyone else.

K. Tools and materials. The furnishing of tools, materials, and supplies by the employer is indicative of control over the worker. When the worker furnishes these items it indicates a lack of control, but lack of control is not indicated if the individual provides tools or supplies customarily furnished by workers in the trade.

L. Expense reimbursement. Payment by the employer of either the worker's approved business or traveling expenses, or both, is a factor indicating control over the worker. A lack of control is indicated when the worker is paid on a job basis and has to take care of all incidental expenses.

M. Satisfying requirements of regulatory and licensing agencies. If an employer is required to enforce standards or restrictions imposed by regulatory or licensing agencies, such action does not evince control.

Subp. 4. Procedures for determining control. The department must determine if control exists by:

- A. reviewing written contracts between the individual and the employer;
- B. interviewing the individual or employer;
- C. obtaining statements of third parties;
- D. examining regulatory statutes governing the organization, trade, or business;
- E. examining the books and records of the employer; and
- F. making any other investigation necessary to determine if the elements of control

specified in subpart 3 exist.

Subp. 5. [Repealed, L 2004 c 206 s 53]

Statutory Authority: *MS s 14.386; 14.388; 268.021*

History: *13 SR 1057; 17 SR 1279; L 2004 c 206 s 53; 31 SR 285*

3315.0600 [Renumbered 3315.0220]

3315.0700 [Renumbered 3315.0501]

3315.0800 [Renumbered 3315.0555, subpart 5]

AGRICULTURAL LABOR

3315.0801 PURPOSE.

Parts 3315.0801 to 3315.0845 further define and clarify terms used in Minnesota Statutes, section 268.035, subdivisions 2, 11, and 20, clause (33), and in parts 3315.0801 to 3315.0845.

Statutory Authority: *MS s 14.386; 14.388; 268.021*

History: *13 SR 1057; 31 SR 285*

3315.0805 DEFINITIONS.

Subpart 1. Agricultural and horticultural commodity. "Agricultural or horticultural commodity" includes nuts, fruits, mushrooms, vegetables, honey, milk, eggs and grain,

flowers, cut flowers, trees, sod and shrubbery, animal feed or bedding, grass seed, vegetable and cereal seed, flax, soy beans, sunflower seeds, corn, medicinal herbs, and other crops.

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

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

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

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

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

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

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

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

Subp. 10. **Primary.** “Primary” means 70 percent or more.

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

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

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

Statutory Authority: *MS s 268.021*

History: *13 SR 1057; 17 SR 1279*

3315.0810 UNMANUFACTURED STATE.

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

Statutory Authority: *MS s 14.386; 14.388; 268.021*

History: *13 SR 1057; 31 SR 285*

3315.0815 FARMS, INCLUSIONS.

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

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

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

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

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

Statutory Authority: *MS s 268.021*

History: *13 SR 1057*

3315.0820 FARMS, EXCLUSIONS.

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

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

Statutory Authority: *MS s 268.021*

History: *13 SR 1057*

3315.0825 AGRICULTURAL LABOR ON FARMS.

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

A. breeding and training horses;

B. hatching poultry;

C. aerial seeding, fertilizing, spraying, and dusting including services related to the mixing of the spray or dust material or the loading of the material into the airplane, as well as services related to the measuring of the swaths and the marking and flagging of fields to be dusted or sprayed;

D. clerical, bookkeeping, and other office work in conjunction with the services referred to in Minnesota Statutes, section 268.035, subdivisions 2 and 11; or

E. holding, feeding, and fattening livestock in feed lots.

Statutory Authority: *MS s 14.386; 14.388; 268.021*

History: *13 SR 1057; 31 SR 285*

3315.0830 AGRICULTURAL LABOR, CONDITIONAL SITUATIONS.

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

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

A. performed in the employ of the owner or tenant or other operator of a farm;

B. rendered in major part on a farm; and

C. performed incidentally to ordinary farming operations.

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

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A. the services are performed for, and the commodities are produced by the operator of the farm; and

B. less than 50 percent of the employee's time is devoted to the services. The 50 percent test is to be applied to each employee with respect to either a pay period or 31 days, whichever is less.

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

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

Statutory Authority: *MS s 14.386; 14.388; 268.021*

History: *13 SR 1057; 31 SR 285*

3315.0835 AGRICULTURAL LABOR EXCLUSIONS.

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

A. breeding, raising, and caring for mice, rats, and other rodents and creatures commonly held for sale in pet shops or raised for research and experimental purposes;

B. breeding, raising, caring for, exhibiting, and boarding dogs and cats;

C. racing, exhibiting, and boarding horses, including services connected with a riding stable or academy;

D. lumbering or landscaping;

E. collecting and processing maple sap into maple syrup or sugar;

F. trapping animals;

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

H. raising and harvesting worms.

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

Statutory Authority: *MS s 268.021*

History: *13 SR 1057*

3315.0840 AGRICULTURAL LABOR, SEPARATE COMMODITIES.

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

Statutory Authority: *MS s 14.386; 14.388; 268.021*

History: *13 SR 1057; 31 SR 285*

3315.0845 CROP PURCHASE AGREEMENTS.

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

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

Statutory Authority: *MS s 268.021*

History: *13 SR 1057; 17 SR 1279*

3315.0900 [Renumbered 3315.0555, subpart 4]

DOMESTIC SERVICE

3315.0901 PURPOSE.

Parts 3315.0901 to 3315.0920 further define and clarify terms used in Minnesota Statutes, section 268.035, subdivision 20, clause (17), and in parts 3315.0901 to 3315.0920.

Statutory Authority: *MS s 14.386; 14.388; 268.021*

History: *13 SR 1057; 31 SR 285*

3315.0905 DEFINITIONS.

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

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

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

Statutory Authority: *MS s 268.021*

History: *13 SR 1057; 17 SR 1279*

3315.0910 DOMESTIC SERVICE, GENERAL.

Subpart 1. Maintenance of employer’s private home. Domestic service in connection with the maintenance of an employer’s private home is service which contributes directly to the protection, cleaning, and normal maintenance, in contrast to major repair projects, of the home and surrounding area. It does not include service which is not ordinarily a part of home duties or which involves the use of skilled or specialized training including service performed by persons in the construction trades.

Subp. 2. Administering to personal wants and comforts of employer. Certain services, although performed in or around the private home of the employer are not domestic services because they are too remotely associated with the requirement that they administer to the personal wants and comforts of the employer. Examples of nondomestic services include those performed by a private or social secretary, tutor, librarian, bookbinder, museum assistant, and medical nurse.

Subp. 3. Domestic service performed by relatives. Domestic service performed by relatives, other than that excluded from employment by Minnesota Statutes, section 268.035, subdivision 20, clause (18), is domestic service within parts 3315.0901 to 3315.0920 if there is a contractual agreement between a relative and the employer.

Subp. 4. Service performed by employees of landlords or rental agencies. Service of a household nature performed in or around rental units by employees of landlords and rental agencies is not domestic service. Service performed by domestic workers in and around the private home of the landlord is not within this exception.

Subp. 5. **Workers obtained through referral or placement agency.** Domestic workers referred to jobs through employment placement agencies that neither supervise nor pay them directly are in the employ of the recipient of the services. However, if an agency is in the business of providing temporary services to clients the agency is the employer and the workers are not providing domestic services.

Subp. 6. **Service performed for a minister, priest, rabbi, or any other member of a religious order.** Service performed in the private home of a minister, priest, rabbi, or any member of a religious order is considered domestic service if the worker is in the employ of the recipient of the service. If the worker is in the employ of the church or religious order the service is excluded employment. The recipient of the service is the employer if the funds for the payment of the domestic worker are not specifically provided by the church or religious order. Funds provided by a congregation of a church are considered as being provided by the church. If funds are not provided by the church specifically for domestic service and the spouse hires, directs, and otherwise controls the worker, the spouse is the employer.

Subp. 7. **Registered and licensed practical nurses.** Registered nurses performing private duty services are generally performing service as independent contractors if they have full discretion in administering their professional services and are not subject to direction and control. Registered and licensed practical nurses who are engaged by hospitals, nursing homes, physicians, government agencies, or commercial businesses generally are not performing services as an independent contractor and the services are nondomestic.

Subp. 8. **Nurses aides and patient helpers.** Nurses aides and patient helpers who are engaged to perform services in the private home of the patient, although they may occasionally administer medication, are usually performing services that are primarily domestic in nature. Patient helpers who are selected by patients who require their services, either in the hospital or after returning to their homes, are generally in the employ of the patient.

Subp. 9. [Repealed, L 2005 c 112 art 2 s 42]

Statutory Authority: *MS s 14.386; 14.388; 268.021*

History: *13 SR 1057; L 2005 c 112 art 2 s 42; 31 SR 285*

NOTE: Subparts 1, 2, 3, 4, 5, 6, 7, and 8 are repealed effective September 30, 2007, by Laws 2007, chapter 128, article 4, section 6.

3315.0915 [Repealed, L 2004 c 206 s 53]

3315.0920 [Repealed, L 2004 c 206 s 53]

3315.1000 Subpart 1. [Renumbered 3315.0555, subpart 3]

Subp. 2. [Renumbered 3315.0555, subpart 3, item A]

Subp. 3. [Renumbered 3315.0555, subpart 3, item B]

Subp. 4. [Renumbered 3315.0555, subpart 3, item C]

Subp. 5. [Renumbered 3315.0555, subpart 3, item D]

Subp. 6. [Renumbered 3315.0555, subpart 3, item E]

Subp. 7. [Renumbered 3315.0555, subpart 3, item F]

Subp. 8. [Renumbered 3315.0555, subpart 3, item G]

Subp. 9. [Renumbered 3315.0555, subpart 3, item H]

Subp. 10. [Renumbered 3315.0555, subpart 3, item I]

Subp. 11. [Renumbered 3315.0555, subpart 3, item J]

Subp. 12. [Renumbered 3315.0555, subpart 3, item K]

Subp. 13. [Renumbered 3315.0555, subpart 3, item L]

Subp. 14. [Renumbered 3315.0555, subpart 3, item M]

RECORDS AND REPORTS

3315.1001 SCOPE.

Parts 3315.1001 to 3315.1020 clarify an employer's duty with regard to records and reports as required under Minnesota Statutes, chapter 268.

Statutory Authority: *MS s 14.386; 14.388; 268.021*

History: *13 SR 1057; 31 SR 285*

3315.1005 NOTIFICATION.

Subpart 1. **Establishment of new business or change in existing business.** Each employer must notify the department within 30 days of a change in legal entity, or the start, transfer, sale, acquisition, or termination of a business conducted in Minnesota, in whole or in part, insofar as the transaction results in the creation of a new or different employer or affects the establishment of employer accounts, the assignment of rates, or the transfer of experience records as provided in Minnesota Statutes, section 268.051, subdivision 4. If the information as submitted is incomplete, subsequent requests for additional information required in determining liability, modifying an existing account, and assigning or transferring of experience rates must be completed, signed, and returned to the department in accordance with the instructions on the form or accompanying correspondence. When the forms require the address of business establishments, the employer must furnish a complete street and city address if one exists. Post office box numbers or similar addresses that do not show the actual location of the business will not be acceptable except as a mailing address.

Subp. 2. [Repealed, L 2004 c 206 s 53]

Subp. 3. **Bankruptcy.** In the case of bankruptcy or receivership proceedings, or any proceedings for the relief of a debtor who is an employer, the trustee in bankruptcy, receiver, or person designated by order of the court as the one in control of the assets of the debtor must promptly file notice of the proceedings with the department.

Statutory Authority: *MS s 14.386; 14.388; 268.021*

History: *13 SR 1057; L 2004 c 206 s 53; 31 SR 285*

NOTE: Subparts 1 and 3 are repealed effective September 30, 2007, by Laws 2007, chapter 128, article 4, section 6.

3315.1010 RECORDS.

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

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

(3) the date of payment; and

K. for each calendar month or, if less, the established pay period of the employer, the hours spent performing services in employment and the hours spent performing noncovered employment, by each employee for which the provisions of part 3315.0535 apply.

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

A. the city or county and state in which the employer maintains a base of operations, as defined in part 3315.0550, subpart 3, used by the individual;

B. the city or county and state from which the services are directed and controlled, if the employer does not have a base of operations in the states in which an individual performs services; and

C. a list of the states in which the individual performs other than temporary or incidental services and the dates services were performed at each location.

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

Statutory Authority: *MS s 14.386; 14.388; 268.021*

History: *13 SR 1057; 31 SR 285*

3315.1015 Subpart 1. [Repealed, L 2004 c 206 s 53]

Subp. 2. [Repealed, L 2004 c 206 s 53]

Subp. 3. [Repealed, L 2004 c 206 s 53]

Subp. 4. [Repealed, L 2003 1Sp3 art 2 s 21]

3315.1020 [Repealed, L 2005 c 112 art 1 s 16]

3315.1100 Subpart 1. [Repealed, 13 SR 1057]

Subp. 2. [Renumbered 3315.0555, subpart 2]

Subp. 2a. [Renumbered 3315.0555, subpart 2, item A]

Subp. 3. [Renumbered 3315.0555, subpart 2, item B]

Subp. 4. [Renumbered 3315.0555, subpart 2, item C]

Subp. 5. [Renumbered 3315.0555, subpart 2, item D]

Subp. 6. [Renumbered 3315.0555, subpart 2, item E]

Subp. 7. [Renumbered 3315.0555, subpart 2, item F]

Subp. 8. [Renumbered 3315.0555, subpart 2, item G]

Subp. 9. [Renumbered 3315.0555, subpart 2, item H]

3315.1200 [Renumbered 3315.0555, subpart 1]

3315.1300 [Renumbered 3315.0515]

3315.1301 Subpart 1. [Repealed, L 2005 c 112 art 2 s 42]

Subp. 2. [Repealed, L 2005 c 112 art 2 s 42]

Subp. 3. [Repealed, L 2004 c 206 s 53; L 2005 c 112 art 2 s 42]

Subp. 4. [Repealed, L 2005 c 112 art 2 s 42]

Subp. 5. [Repealed, L 2005 c 112 art 2 s 42]

Subp. 6. [Repealed, L 2004 c 206 s 53; L 2005 c 112 art 2 s 42]

3315.1305 [Repealed, L 2004 c 206 s 53]

3315.1310 [Repealed, L 2004 c 206 s 53]

RATES

3315.1315 EXPERIENCE RATES.

Subpart 1. [Repealed, L 2005 c 112 art 2 s 42]

Subp. 2. [Repealed, L 2005 c 112 art 2 s 42]

Subp. 3. [Repealed, L 2005 c 112 art 2 s 42]

Subp. 4. **Previously liable employer.** An employer that ceases to be a liable employer as a result of its business being transferred or discontinued or as a result of the business entity being granted termination of coverage under Minnesota Statutes, section 268.042, regains its previous experience rating account if it should once again become subject to the law and if:

A. less than 14 quarters have elapsed in which no covered wages were paid or due and payable;

B. the account contains taxable payroll in the experience rate period applicable at the time it again becomes subject to the law; and

C. all of the experience had not been transferred to a successor.

Statutory Authority: *MS s 14.386; 14.388; 268.0122; 268.021*

History: *13 SR 1057; 18 SR 2194; L 1997 c 66 s 79; L 2005 c 112 art*

NOTE: Subpart 4 is repealed effective September 30, 2007, by Laws 2007, chapter 128, article 4, section 6, 2 s 42; 31 SR 285

3315.1400 [Renumbered 3315.0510]

3315.1500 [Renumbered 3315.0520]

3315.1600 [Renumbered 3315.0545]

PAYMENTS

3315.1650 Subpart 1. [Repealed, L 2004 c 206 s 53; L 2005 c 112 art 2 s 42]

Subp. 2. [Repealed, L 2005 c 112 art 2 s 42]

Subp. 3. [Repealed, L 2005 c 112 art 2 s 42]

Subp. 4. [Repealed, L 2005 c 112 art 2 s 42]

Subp. 5. [Repealed, L 2005 c 112 art 2 s 42]

3315.1700 [Renumbered 3315.0550, subpart 1]

3315.1800 Subpart 1. [Renumbered 3315.0550, subpart 2]

Subp. 2. [Renumbered 3315.0550, subpart 3]

Subp. 3. [Renumbered 3315.0550, subpart 4]

Subp. 4. [Renumbered 3315.0550, subpart 5]

Subp. 5. [Renumbered 3315.0550, subpart 6]

3315.1900 [Renumbered 3315.0535]

3315.2000 [Renumbered 3315.0540]

3315.2010 ADJUSTMENTS AND REFUNDS, TAXPAYING ACCOUNTS.

Subpart 1. **Overpayments.** Tax reports, other than those lacking proper signature, will not be returned to employers for correction. Whenever an erroneous report is submitted that results in a tax overpayment, the employer may obtain a credit allowance or refund if the payment was made within the current or preceding four calendar years. A request for adjustment must show the total wages, excess wages, taxable wages, and tax as previously reported and as corrected for the period involved. If the adjustment changes the total wages reported, the request must also include the Social Security number, name, wages, and weeks worked as previously reported and as corrected for each individual whose wages were changed. The department's form, Employer's Application for Wage Adjustment, may be used for this purpose. The credit allowance or refund must be reduced by any indebtedness due the department by the employer and by the amount of benefits paid to a claimant as a direct result of the employer's erroneous report. This subpart does not apply to overpayments of voluntary taxes.

The commissioner may, upon request of the employer or upon the commissioner's own initiative, issue a refund covering the overpayment. Lacking specific instructions from the

employer, the commissioner must issue a credit statement and mail it to the employer at the employer's last known address. If the employer fails to use the credit, the commissioner may cancel it and issue a refund covering the overpayment.

Subp. 2. **Underpayments.** If the tax report first submitted by an employer understates the amount of taxable wages resulting in an understatement of the tax due and owing for a given period, the employer must file the department's form, Employer's Application for Wage Adjustment, and make remittance covering the additional tax due. The information provided to the department must include the total wages, excess wages, taxable wages, and tax as previously reported and as corrected for the period involved. If the adjustment changes the total wages reported, the request must also include the Social Security number, name, wages, and weeks worked as previously reported and as corrected for each individual whose wages were changed.

Subp. 3. **Wages reported to another state in error.** Wages for services determined to be reportable to Minnesota but reported to another state in error must be reported and the tax paid to Minnesota. This does not apply to wages paid more than four calendar years before the year of the determination or paid beyond the refunding state's statute of limitations, whichever is less.

Statutory Authority: *MS s 14.386; 14.388; 268.021*

History: *13 SR 1057; L 1997 c 66 s 80; 31 SR 285*

NOTE: This part is repealed effective September 30, 2007, by Laws 2007, chapter 128, article 4, section 6.

3315.2100 [Renumbered 3315.0530]

3315.2200 [Renumbered 3315.0525]

3315.2210 [Repealed, L 2005 c 112 art 2 s 42]

3315.2300 [Renumbered 3315.0801]

3315.2400 [Renumbered 3315.0805]

3315.2410 [Repealed, L 2004 c 206 s 53]

3315.2500 [Renumbered 3315.0820]

3315.2600 [Renumbered 3315.0815]

3315.2610 [Repealed, L 2004 c 206 s 53]

3315.2700 [Renumbered 3315.0845]

3315.2750 [Repealed, L 2004 c 206 s 53]

3315.2800 [Renumbered 3315.0825]

3315.2810 REIMBURSING ACCOUNTS.

Subpart 1. [Repealed, L 2004 c 206 s 53]

Subp. 2. **Change in method of payment.** An employer that changes from reimbursing to taxpaying continues to be liable to reimburse the trust fund for benefits that are paid based on wages paid during the effective period of the employer's election to make reimbursements. All benefit charges based on wages paid after the effective date of the approval of the change to taxpaying must be charged to the employer's experience rating account. When an employer changes from taxpaying to reimbursing, benefit charges in the employer's experience rating account must be used in future rate computations if the employer reverts back to taxpaying and the benefit charges are within the experience rate computation period in effect at the time of the change.

Subp. 3. [Repealed, L 2004 c 206 s 53]

Subp. 4. **Application of partial payments.** Except for an indebtedness that has been reduced to judgment, payments received without specific instructions and which are not clearly intended for a specific benefit charge or indebtedness must be applied to remove all benefit charges and interest beginning with the oldest calendar quarter.

Statutory Authority: *MS s 14.386; 14.388; 268.021*

History: *13 SR 1057; L 2003 1Sp3 art 2 s 20; L 2004 c 206 s 53; 31 SR 285*

NOTE: Subparts 2 and 4 are repealed effective September 30, 2007, by Laws 2007, chapter 128, article 4, section 6.

- 3315.2900** [Renumbered 3315.0830]
- 3315.3000** [Renumbered 3315.0835]
- 3315.3100** [Renumbered 3315.0840]
- 3315.3200** [Renumbered 3315.0901]
- 3315.3210** [Repealed, L 2005 c 112 art 1 s 16]
- 3315.3220** Subpart 1. [Repealed, L 2005 c 112 art 1 s 16]
 - Subp. 2. [Repealed, L 2005 c 112 art 1 s 16]
 - Subp. 3. [Repealed, L 2005 c 112 art 1 s 16]
 - Subp. 4. [Repealed, L 2004 c 206 s 53]
- 3315.3300** [Renumbered 3315.0905]
- 3315.3400** Subpart 1. [Repealed, 13 SR 1057]
 - Subp. 2. [Renumbered 3315.0910, subpart 1]
 - Subp. 3. [Renumbered 3315.0910, subpart 2]
 - Subp. 4. [Renumbered 3315.0910, subpart 3]
 - Subp. 5. [Renumbered 3315.0910, subpart 4]
 - Subp. 6. [Renumbered 3315.0910, subpart 5]
 - Subp. 7. [Renumbered 3315.0910, subpart 6]
 - Subp. 8. [Renumbered 3315.0910, subpart 7]
 - Subp. 9. [Renumbered 3315.0910, subpart 8]
 - Subp. 10. [Renumbered 3315.0910, subpart 9]
- 3315.3500** [Renumbered 3315.0920]
- 3315.3600** [Renumbered 3315.1001]
- 3315.3700** [Renumbered 3315.1005]
- 3315.3800** [Renumbered 3315.1010, subpart 1]
- 3315.3900** [Renumbered 3315.1010, subpart 2]
- 3315.4000** [Renumbered 3315.1010, subpart 3]
- 3315.4100** [Renumbered 3315.1015]
- 3315.4200** [Renumbered 3315.1020, subpart 1]
- 3315.4300** Subpart 1. [Renumbered 3315.1020, subpart 2]
 - Subp. 2. [Renumbered 3315.1020, subpart 2, item A]
 - Subp. 3. [Renumbered 3315.1020, subpart 2, item B]
 - Subp. 4. [Renumbered 3315.1020, subpart 2, item C]
 - Subp. 5. [Renumbered 3315.1020, subpart 2, item D]
- 3315.4400** [Renumbered 3315.1020, subpart 3]
- 3315.4500** [Renumbered 3315.1020, subpart 4]
- 3315.4600** [Renumbered 3315.1020, subpart 5]
- 3315.4700** [Renumbered 3315.1020, subpart 6]
- 3315.4800** [Renumbered 3315.1020, subpart 7]
- 3315.4900** [Renumbered 3315.1020, subpart 8]
- 3315.5000** [Renumbered 3315.1020, subpart 9]

EMPLOYER TAXES

3315.5100 [Renumbered 3315.1020, subpart 10]

3315.5200 [Renumbered 3315.1020, subpart 11]

3315.5300 [Renumbered 3315.1020, subpart 12]

3315.5400 [Renumbered 3315.1020, subpart 13]

3315.5500 [Renumbered 3315.1020, subpart 14]

3315.5600 [Renumbered 3315.1020, subpart 15]

3315.5700 [Renumbered 3315.1020, subpart 16]

3315.5800 [Renumbered 3315.1020, subpart 17]

3315.5900 [Renumbered 3315.1020, subpart 18]

3315.6000 [Renumbered 3315.1020, subpart 19]

3315.6100 [Renumbered 3315.2210]

3315.6200 Subpart 1. [Renumbered 3315.1305]

Subp. 2. [Repealed, 13 SR 1057]