

Employment and Security

CHAPTER 268

DIVISION OF EMPLOYMENT AND SECURITY

268.01 TRANSFER OF POWERS AND DUTIES.

HISTORY. 1939 c. 431 art. 7 s. 2 (d); M. Supp. s. 3199-102.

268.02 POWERS AND DUTIES OF DIRECTOR OF EMPLOYMENT AND SECURITY.

HISTORY. 1917 c. 113 s. 1; 1921 c. 81 s. 15; G. S. 1923 ss. 4046, 4254; M. S. 1927 ss. 4046, 4254; 1939 c. 431 art. 7 s. 2 (d); M. Supp. c. 3199-102.

State regulations providing minimum wages in excess of that fixed under industry codes under the NRA are controlling. OAG Oct. 28, 1933.

If the director of social welfare spends any money for blind for medical examination or for corrective surgery, and similar, it must be out of federal funds, there being no legislative state appropriation. OAG April 9, 1944 (9a-10).

A private attorney should be retained to protect the rights of an injured person who is under the guardianship of the director of social security. OAG Jan. 16, 1945 (844g).

Strikes and boycotts—right to picket in non-labor disputes. 19 MLR 817.

268.025 FREE EMPLOYMENT BUREAUS.

HISTORY. 1907 c. 180 ss. 1, 2; 1913 c. 518 ss. 3, 9; G.S. 1913 ss. 3814, 3820; G.S. 1923 ss. 4048, 4249; M.S. 1927 ss. 4048, 4249.

Industrial commission has power without restriction or restraint to appoint and remove certain designated employees or officials. OAG May 10, 1933.

In view of Laws 1921, Chapter 81, a chief factory inspector need not pass a competitive examination. OAG Dec. 21, 1931.

268.03 DECLARATION OF PUBLIC POLICY.

HISTORY. Ex. 1936 c. 2 s. 1; M. Supp. s. 4337-21.

Refusal of salesman, who was entitled to monthly salary under employment contract breached by employer, to accept sales positions upon straight commission basis did not constitute a failure by the employee to mitigate damages. *Bang v International*, 212 M 135, 4 NW(2d) 113.

The evidence as to whether claimant was guilty of misconduct in connection with her work was in direct conflict. The finding that she was not guilty of misconduct is supported by the evidence. *Ley v Doherty*, 215 M 105, 9 NW(2d) 327.

The unemployment compensation law seeks to provide for payment of benefits to those who are unemployed through no fault of their own. *Fannon v Fed. Cart-ridge*, 219 M 306, 18 NW(2d) 249.

268.04 DEFINITIONS.

HISTORY. Ex. 1936 c. 2 s. 2; 1937 c. 43 s. 1; 1937 c. 306; 1939 c. 443 s. 1; M. Supp. s. 4337-22; 1941 c. 554 s. 1; 1943 c. 650 s. 1; 1945 c. 376 s. 1.

The requirement of due process cannot be waived or dispensed with either by the legislature or by an executive tribunal to which it delegates the duty of ad-

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ministering the law; and the fact that observance of constitutional limitations will work serious inconvenience in administration does not justify denial of due process in making administrative decisions. *Juster Bros. v Christgau*, 214 M 109, 7 NW(2d) 501.

The raising of fur-bearing animals, if carried on extensively and as a separate and distinct commercial-enterprise, is not farming within the exemptions of this act. *Tucker v Newman*, 217 M 478, 14 NW(2d) 767.

While a remedial law is to be given a broad rather than a narrow scope, there are limits beyond which judicial interpretation may not be carried. In this case, because a milk hauler for a dairy company was in fact an independent contractor and not a servant, the dairy was not liable for contributions to the unemployment compensation fund. *Rochester Dairy v Christgau*, 217 M 461, 14 NW(2d) 780.

Subd. 9. If certain hospitals are liable for contribution under federal act, they would gain nothing by claiming exemption under state act, and might lose to their employees right to participate in benefits. OAG March 18, 1937 (885g-4).

Subd. 10. An employer comes under the act for year 1936 if he had eight employees during that year, and for the year 1937, if he had one or more employees during that year, and one becomes an employer within the act if he has one or more employees during 1937, though he did not have eight employees in 1936. OAG April 12, 1937 (885i).

Subd. 11. Persons employed in municipal liquor stores, municipal power plants and waterworks, county fairs, and cemeteries owned and operated by municipalities are not employees subject to the act. OAG Jan. 13, 1938 (885t).

Subd. 12. Where work is done on a dam in Mississippi river on boundary, all work done on dam on Minnesota side of center of channel is subject to Minnesota unemployment compensation act. OAG March 9, 1937 (885b).

(5) Whether a particular hospital must contribute is a question of fact, and if a hospital is liable to the federal tax, it would be good policy to consent to be subject to provisions of Minnesota act, though they might not be liable to taxation under Constitution Article 9, Section 1. OAG March 18, 1937 (885g-4).

(6) An employee of a nursery or an employee of a florist is an agricultural laborer so long as he is engaged in cultivation of soil, plants, shrubbery, or other products of that nature, but a distinction is made with respect to salesmen and clerical help. OAG March 10, 1939 (923).

Minnesota labor relations act. 28 MLR 64.

268.05 UNEMPLOYMENT COMPENSATION FUND.

HISTORY. Ex. 1936 c. 2 s. 3; 1937 c. 452 s. 1; 1939 c. 443 s. 2; M. Supp. s. 4337-23; 1941 c. 554 s. 2; 1945 c. 376 s. 2.

Word "warrant" is synonymous with "ordinary check" or "written order". OAG Dec. 20, 1937 (885u).

General bond of state treasurer does not cover unemployment compensation. OAG April 14, 1937 (885q-1).

Member of commission designated by industrial commission is authorized to requisition money from unemployment trust fund to be placed in benefit account. OAG Jan. 5, 1938 (885e-4).

Victor Christgau was duly appointed and qualified director of division of employment and security, with all powers and duties previously vested in industrial commission under the unemployment compensation law and section 4046 (3) and section 4254 of Mason's Statutes, and with power to requisition money from the unemployment trust fund in custody of the secretary of the treasury of the United States. OAG June 3, 1939 (88a).

268.06 CONTRIBUTIONS FROM EMPLOYERS.

HISTORY. Ex. 1936 c. 2 s. 4; 1937 c. 306 s. 2; 1939 c. 443 s. 3; M. Supp. s. 4337-24; 1941 c. 554 s. 3; 1943 c. 650 s. 2; 1945 c. 376 s. 3.

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Presumption of admission by employer. *Juster v Christgau*, 214 M 113, 7 NW(2d) 501.

Laws 1943, Chapter 650, Section 2, is not unconstitutional as violative of the provisions of the federal and state constitutions affording to all persons the equal protection of the laws and requiring that taxes be uniform upon the same-class of subjects. *State v Donovan*, 218 M 606, 16 NW(2d) 897.

Contributions by an employer under protest must be immediately transferred to Washington. OAG March 3, 1937 (885q-7).

An employer is not excused from making contributions to state fund because as a result of failure to make payments within time provided by regulations of commission and federal act he is not entitled to credit for such state contributions under federal act. OAG Dec. 16, 1937 (885g-2).

Tax provision of social security act. 22 MLR 299.

268.07 BENEFITS PAYABLE.

HISTORY. Ex. 1936 c. 2 s. 5; 1937 c. 306 s. 3; 1939 c. 443 s. 4; M. Supp. s. 4337-25; 1941 c. 554 s. 4; 1943 c. 650 s. 3; 1945 c. 376 s. 4.

"Beneficiary wages" and credits allowable. *Juster v Christgau*, 214 M 123, 7 NW(2d) 501.

Commission may distinguish between "part time employee" and a person who is "partially unemployed", and limit payment of benefit to persons who are "partially unemployed", and payments of partial benefits may be limited to those persons who are registered for full time employment and who are able and willing to accept such full time employment, as distinguished from employees who do not work full time for a personal reason. OAG Nov. 23, 1937 (885c-1).

268.08 WHO ARE ELIGIBLE TO RECEIVE BENEFITS.

HISTORY. Ex. 1936 c. 2 s. 6; 1937 c. 43 s. 2; 1937 c. 306 s. 4; 1939 c. 443 s. 5; M. Supp. s. 4337-26; 1941 c. 554 s. 5; 1943 c. 650 s. 4; 1945 c. 376 s. 5.

Unemployment compensation; significance of variations in state laws. 28 MLR 390.

268.09 WHO ARE DISQUALIFIED FROM BENEFITS.

HISTORY. Ex. 1936 c. 2 s. 7; 1937 c. 401 s. 1; 1939 c. 443 s. 6; M. Supp. s. 4337-27; 1941 c. 554 s. 6; 1943 c. 650 s. 5; 1945 c. 376 s. 6.

Disqualifications illustrated. *Juster v Christgau*, 214 M 112, 7 NW(2d) 501.

Discretion by director as to partial disqualification. *Chellson v Division of Unemployment*, 214 M 332, 8 NW(2d) 42.

Neither claimants acts during employment, nor her non-acceptance of work offered were such as to disqualify. *Ley v Doherty*, 215 M 105, 9 NW(2d) 327.

Employment offered was not suitable and claimant was justified in refusing it. *Bowman v Troy*, 215 M 227, 9 NW(2d) 506.

Where claimant was suspended and three weeks later was offered an opportunity to return to work, which he refused, he is held to have discontinued voluntarily and without good cause. *Richard v Federal Cartridge*, 217 M 1937, 14 NW(2d) 118.

Refusal of claimant to accept employment in a trade other than his own when there is reasonable prospect of work in his own trade does not disqualify. *Berthiaume v Christgau*, 218 M 65, 15 NW(2d) 115.

Termination of employment because of circumstances directly connected with employment resulting in illness making it impossible for employee to continue therein because of serious danger to health is involuntary and for "good cause attributable to employer" within the provisions of the employment and security act even though the employer is free from negligence in connection therewith. The burden of proving illness is upon the employee. *Fannon v Fed. Cartridge*, 219 M 306, 18 NW(2d) 249.

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268.10 CLAIMS FOR BENEFITS.

HISTORY. Ex. 1936 c. 2 s. 8; 1937 c. 306 s. 5; 1939 c. 443 s. 7; M. Supp. s. 4337-28; 1941 c. 554 s. 7; 1943 c. 650 s. 6; 1945 c. 376 s. 7.

Notice of initial determination by a referee should be given to all interested parties, and all employers of applicant during his base period are parties of interest. OAG Oct. 15, 1937 (885f-2).

Right of appeal is not limited to cases where a dispute exists under section 4337-27(d) (268.09(4)), or where reference on his own initiative refers questions of right of applicant to benefits or a question as to amount of or duration thereof. OAG Oct. 15, 1937 (885f-2).

Subd. 6. Argument presented by counsel or appellant based upon testimony already received or upon law need not be reported. OAG Sept. 15, 1939 (885m-3).

Subd. 10. Director may not adopt a valid rule or regulation requiring an appealing party to pay a small fee for a copy of transcript made by appellant tribunal, unless the appealing party desires a copy, law not requiring a copy. OAG Sept. 15, 1939 (885m-3).

Courts of law may review administrative action of an executive or administrative officer or tribunal to determine whether such action is within the law, constitutional or statutory. *Juster Bros. v Christgau*, 214 M 109, 7 NW(2d) 501.

The supreme court will go no further than to determine whether the evidence was such that it might reasonably make the order which it made. *Chellson v Division of Employment*, 214 M 334, 8 NW(2d) 42.

Laws 1943, Chapter 650, Section 6 (1) (2) changes the method of review by the supreme court under the unemployment compensation law from direct appeal to certiorari, but makes no substantial change in the scope of review. *Richard v Federal Cartridge*, 217 M 136, 14 NW(2d) 118.

A notice to an employer which disclosed the wage credits earned from each other employer in the base period conflicts with section 268.12. 1942 OAG 89, May 26, 1941 (885).

268.11 PERIOD, ELECTION AND TERMINATION OF EMPLOYERS' COVERAGE.

HISTORY. Ex. 1936 c. 2 s. 9; 1937 c. 306 s. 6; M. Supp. s. 4337-29; 1941 c. 554 s. 8; 1945 c. 376 s. 8.

The deciding factor to determine employment is that of control. It is not the fact of actual interference, but the right to interfere with the control that distinguishes an independent contractor from a servant or agent. *Rochester Dairy v Christgau*, 217 M 463, 14 NW(2d) 780.

268.12 ADMINISTRATION.

HISTORY. Ex. 1936 c. 2 s. 10; 1937 c. 306 s. 7; 1939 c. 441 s. 9; 1939 c. 443 ss. 8, 10; M. Supp. s. 4337-30; 1941 c. 554 s. 9; 1943 c. 650 s. 7; 1945 c. 376 s. 9.

Subd. 5. Persons employed by divisions on January 1, 1938, should not be denied opportunity to take competitive examinations because they are over 50 years of age or because their former schooling is less than that prescribed by employment specifications. OAG Oct. 10, 1938 (885m-7).

Rules and regulations with respect to qualifying age limit will not prevail over veterans preference act. OAG Jan. 16, 1939 (270).

Qualified veteran should be certified ahead of those entitled to preference by virtue of incumbency. OAG Feb. 17, 1939 (885).

Regulations cannot alter preference given by statute to veterans. OAG Feb. 17, 1939 (885).

Commission of administration and finance (commissioner of administration) has same duty to perform with reference to bonds given by employees of unemployment compensation division as it has with reference to bonds given by employees of other departments, except that penalties and position to be bonded are

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not designated by it, such bonds to be filed with the secretary of state as in other cases, but unemployment commission is to designate employees to be bonded, and amount thereof. OAG April 13, 1939 (885).

Members of an advisory council are not employees within the meaning of the classified or unclassified service of the state. OAG Feb. 24, 1944 (644b).

268.13 RECIPROCAL BENEFIT ARRANGEMENTS.

HISTORY. Ex. 1936 c. 2 s. 11; 1937 c. 306 s. 8; 1939 c. 443 s. 9; M. Supp. s. 4337-31; 1941 c. 554 s. 10; 1943 c. 650 s. 8; 1945 c. 376 s. 10.

268.14 FREE PUBLIC EMPLOYMENT OFFICES ESTABLISHED.

HISTORY. Ex. 1936 c. 2 s. 12; 1937 c. 306 s. 9; 1939 c. 443 s. 11; M. Supp. s. 4337-32; 1941 c. 554 s. 11; 1945 c. 376 s. 11.

Any political subdivision of state may contribute toward establishment of free public employment offices. OAG Dec. 18, 1937 (885m-13).

School district may contribute money to unemployment service account. OAG May 4, 1938 (1596b-11).

268.15 UNEMPLOYMENT COMPENSATION ADMINISTRATION FUND; SPECIAL FUND.

HISTORY. Ex. 1936 c. 2 s. 13; M. Supp. s. 4337-33; 1941 c. 554 s. 12; 1945 c. 376 s. 12.

State treasurer going into office January 4, 1937, was proper payee of unemployment compensation administration fund. OAG Dec. 31, 1936 (885q).

General bond of state treasurer does not cover unemployment compensation. OAG April 14, 1937 (885q-1).

268.16 COLLECTION OF CONTRIBUTIONS.

HISTORY. Ex. 1936 c. 2 s. 14; M. Supp. s. 4337-34; 1941 c. 554 s. 13; 1943 c. 650 s. 9; 1945 c. 376 s. 13.

Comparison of the exactions provided by the unemployment acts of the various states for non-payment of contributions due. *Meilenk v Unemployment Reserves*, 314 US 569.

268.17 PROTECTION OF RIGHTS AND BENEFITS.

HISTORY. Ex. 1936 c. 2 s. 15; M. Supp. s. 4337-35; 1941 c. 554 s. 14.

268.18 FALSE STATEMENTS.

HISTORY. Ex. 1936 c. 2 s. 16; M. Supp. s. 4337-36; 1941 c. 554 s. 15.

Reports; statements; compliance; non-compliance; penalties. *Juster v Christgau*, 214 M 124, 7 NW(2d) 501.

268.20 REPRESENTATION IN COURT.

HISTORY. Ex. 1936 c. 2 s. 17; M. Supp. s. 4337-37; 1941 c. 554 s. 16.

268.21 NON-LIABILITY OF STATE.

HISTORY. Ex. 1936 c. 2 s. 18; M. Supp. s. 4337-38; 1941 c. 554 s. 17.

268.22 SAVING CLAUSE.

HISTORY. Ex. 1936 c. 2 s. 19; M. Supp. s. 4337-39; 1941 c. 554 s. 18.

268.24 CITATION.

HISTORY. Ex. 1936 c. 2 s. 21; M. Supp. s. 4337-41; 1941 c. 554 s. 20; 1945 c. 376 s. 14.

268.25 EFFECTIVE DATES.

HISTORY. 1945 c. 376 s. 15.