

## CHAPTER 268

## DEPARTMENT OF ECONOMIC SECURITY

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**268.0122 POWERS AND DUTIES.**

*[For text of subs 1 to 5, see M.S.1994]*

Subd. 6. **Mission; efficiency.** It is part of the department's mission that within the department's resources the commissioner shall endeavor to:

- (1) prevent the waste or unnecessary spending of public money;
- (2) use innovative fiscal and human resource practices to manage the state's resources and operate the department as efficiently as possible;
- (3) coordinate the department's activities wherever appropriate with the activities of other governmental agencies;
- (4) use technology where appropriate to increase agency productivity, improve customer service, increase public access to information about government, and increase public participation in the business of government;
- (5) utilize constructive and cooperative labor-management practices to the extent otherwise required by chapters 43A and 179A;
- (6) include specific objectives in the performance report required under section 15.91 to increase the efficiency of agency operations, when appropriate; and
- (7) recommend to the legislature, in the performance report of the department required under section 15.91, appropriate changes in law necessary to carry out the mission of the department.

Subd. 7. **Classification of data on individuals.** Data collected on individuals pursuant to a program operated by the commissioner are private data on individuals as defined in section 13.02, subdivision 12, unless more restrictively classified by law.

**History:** 1995 c 248 art 11 s 19; 1995 c 259 art 1 s 40

**268.0124 PLAIN LANGUAGE IN WRITTEN MATERIALS.**

(a) To the extent reasonable and consistent with the goals of providing easily understandable and readable materials and complying with federal and state laws governing the programs, all written materials relating to services and determinations of eligibility for or amounts of benefits that will be given to applicants for or recipients of assistance under a program administered or supervised by the commissioner of economic security must be understandable to a person of average intelligence and education.

(b) All written materials relating to determinations of eligibility for or amounts of benefits that will be given to applicants for or recipients of assistance under programs adminis-

tered or supervised by the commissioner of economic security must be developed to satisfy the plain language requirements of the plain language contract act under sections 325G.29 to 325G.36. Materials may be submitted to the attorney general for review and certification. Notwithstanding section 325G.35, subdivision 1, the attorney general shall review submitted materials to determine whether they comply with the requirements of section 325G.31. The remedies available pursuant to sections 8.31 and 325G.33 to 325G.36 do not apply to these materials. Failure to comply with this section does not provide a basis for suspending the implementation or operation of other laws governing programs administered by the commissioner.

(c) The requirements of this section apply to all materials modified or developed by the commissioner on or after July 1, 1988. The requirements of this section do not apply to materials that must be submitted to a federal agency for approval, to the extent that application of the requirements prevents federal approval.

(d) Nothing in this section may be construed to prohibit a lawsuit brought to require the commissioner to comply with this section or to affect individual appeal rights granted pursuant to section 268.10.

(e) The commissioner shall report annually to the chairs of the health and human services divisions of the senate finance committee and the house of representatives appropriations committee on the number and outcome of cases that raise the issue of the commissioner's compliance with this section.

**History:** 1995 c 259 art 1 s 41

## 268.021 RULES.

The commissioner of the department of economic security is authorized to adopt rules in accordance with chapter 14, with respect to programs the commissioner administers under this chapter and other programs for which the commissioner is responsible under federal or state law.

**History:** 1995 c 233 art 2 s 56

## 268.04 DEFINITIONS.

*[For text of subs 1 to 9, see M.S.1994]*

Subd. 10. **Employer.** "Employer" means: (1) Any employing unit which, after December 31, 1995, has one or more individuals performing services in employment for which there were wages paid, within either the current or preceding calendar year, except as provided in clause (17);

(2) Any employing unit (whether or not an employing unit at the time of acquisition) which acquired the organization, trade, or business, or substantially all of the assets thereof, of another employing unit which at the time of such acquisition was an employer subject to this law; or which acquired a part of the organization, trade, or business of another employing unit which at the time of such acquisition was an employer subject to this law;

(3) For purposes of clause (1), employment shall include service which would constitute employment but for the fact that such service is deemed to be performed entirely within another state pursuant to an election under an arrangement entered into (in accordance with section 268.13, subdivision 1) by the commissioner and an agency charged with the administration of any other state or federal unemployment compensation law;

(4) Any employing unit which acquired the organization, trade, or business, or substantially all the assets thereof, of another employing unit, and which, if treated as a single unit with such other employing unit, would be an employer under clause (1);

(5) Any employing unit which, together with one or more other employing units, is owned or controlled (by legally enforceable means or otherwise) directly or indirectly by the same interests, or which owns or controls one or more other employing units (by legally enforceable means or otherwise) and which, if treated as a single unit with such other employing units or interests or both, would be an employer under clause (1), except as provided in clause (17);

(6) Any joint venture composed of one or more employers as otherwise defined herein;

(7) Any nonresident employing unit which employs within this state one or more employees for one or more weeks;

(8) Any employing unit for which service in employment, as defined in subdivision 12, clause (9), is performed;

(9) Any employing unit which, having become an employer under the preceding clauses or clause (14), (15), or (16), has not, under section 268.11, ceased to be an employer subject to these sections;

(10) For the effective period of its election pursuant to section 268.11, subdivision 3, any other employing unit which has elected to become subject to sections 268.03 to 268.231;

(11) Notwithstanding any inconsistent provisions of sections 268.03 to 268.231, any employing unit not an employer by reason of any other clause of this subdivision for which service is performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund or which, as a condition for the approval of this law for full tax credit against the tax imposed by the federal unemployment tax act, is required pursuant to such act, to be an "employer" under the law;

(12) Except as provided in clause (11), and notwithstanding any other provisions of sections 268.03 to 268.231, no employing unit shall be initially determined a subject employer on the basis of covered employment performed more than four years prior to the year in which such determination is made, unless the commissioner finds that the records of such employment experience were fraudulently concealed or withheld for the purpose of escaping liability under said sections;

(13) Any employing unit for which service in employment, as defined in subdivision 12, clause (7), is performed;

(14) Any employing unit for which service in employment as defined in subdivision 12, clause (8), is performed;

(15) Any employing unit for which agricultural labor as defined in subdivision 12, clause (13), is performed;

(16) Any employing unit for which domestic service in employment as defined in subdivision 12, clause (14), is performed;

(17) (a) In determining whether or not an employing unit for which domestic service and other than domestic service is performed is an employer under clause (1) or (5), the wages earned or the employment of an employee performing domestic service shall not be taken into account.

(b) In determining whether or not an employing unit for which agricultural labor and other than agricultural labor is performed is an employer under clause (1), (8) or (16), the wages earned or the employment of an employee performing service in agricultural labor after December 31, 1977, shall not be taken into account. If an employing unit is an employer of agricultural labor the determination of whether it is an "employer" shall be governed by clause (1).

*[For text of subs 11 to 36, see M.S.1994]*

**History:** 1995 c 54 s 1

#### **268.041 DETERMINATIONS OF COVERAGE.**

An official, designated by the commissioner, upon the commissioner's own motion or upon application of an employing unit, shall determine if an employing unit is an employer within the meaning of this chapter or as to whether services performed for it constitute employment within the meaning of this chapter, or whether the remuneration for services constitutes wages as defined in section 268.04, subdivision 25, and shall notify the employing unit of the determination. The determination shall be final unless the employing unit, within 30 days after the mailing of notice of the determination to the employing unit's last known address, files a written appeal from it. Proceedings on the appeal shall be conducted in accordance with section 268.105.

**History:** 1995 c 54 s 2

**268.06 EMPLOYERS CONTRIBUTIONS.**

*[For text of subs 1 and 2, see M.S.1994]*

**Subd. 3a. Rate for new employers.** Notwithstanding the provisions of subdivision 2, each employer, who becomes subject to this law, shall pay contributions at a rate:

(a) Not exceeding 5–4/10 percent, that is the higher of (1) one percent and (2) the state's five-year benefit cost rate for the 60 consecutive month period immediately preceding July 1 of each year for each employer, except employers in the construction industry. For purposes of this clause, the state's five-year benefit cost rate shall be computed annually and shall be derived by dividing the total dollar amount of benefits paid to claimants under this law during the 60 consecutive calendar months immediately preceding July 1 of each year by the total dollar amount of wages subject to contributions under this law during the same period. The rate so determined shall be applicable for the calendar year next succeeding each computation date.

(b) Each employer in the construction industry who becomes subject to this chapter shall pay contributions at a rate, not exceeding the maximum contribution rate for all employers as provided under subdivision 8, that is the higher of (1) one percent, or (2) the state's five-year benefit cost rate for construction employers for the 60 consecutive month period immediately preceding July 1 of each year. For purposes of this clause, the state's five-year benefit cost rate shall be computed annually and shall be derived by dividing the total dollar amount of benefits paid to claimants of construction employers during the 60 consecutive calendar months immediately preceding July 1 of each year by the total dollar amount of wages of construction employers subject to contributions during the same period. The rate so determined shall be applicable for the calendar year next succeeding each computation date.

For purposes of this subdivision an employer is in the construction industry if assigned an industrial classification within division C of the Standard Industrial Classification Manual issued by the United States Office of Management and Budget as determined by the tax branch of the department, except as excluded by rules adopted by the commissioner.

*[For text of subs 4 to 8a, see M.S.1994]*

**Subd. 18. Notice to employer.** The commissioner shall mail to the last known address of each employer a quarterly notice of the benefits which have been charged to the employer's account, as determined by the department. Unless reviewed in the manner hereinafter provided, charges set forth in such notice, or as modified by a redetermination, a decision of a reemployment insurance judge, or the commissioner, shall be final and shall be used in determining the contribution rates for all years in which the charges occur within the employer's experience period and shall not be subject to collateral attack by way of review of a rate determination, application for adjustment or refund, or otherwise.

**Subd. 19. Notice of rate.** The commissioner shall mail to the last known address of each employer notice of the employer's contribution rate as determined for any calendar year pursuant to this section. Such notice shall contain the contribution rate, factors used in determining the individual employer's experience rating, and such other information as the commissioner may prescribe. Unless changed by the procedure provided in this subdivision, the assigned rate as initially determined or as changed by a redetermination by the tax branch of this department, a decision of a reemployment insurance judge, or the commissioner shall be final except for fraud and shall be the rate upon which contributions shall be computed for the calendar year for which such rate was assigned, and shall not be subject to collateral attack for any errors, clerical or otherwise, whether by way of claim for adjustment or refund, or otherwise. If the legislature changes any of the factors used to determine the contribution rate of any employer for any year subsequent to the original mailing of such notice for the year, the earlier notice shall be void. The notice based on the new factors shall be deemed to be the only notice of rate of contributions for that year and shall be subject to the same finality, redetermination, and review procedures as provided above.

**Subd. 20. Protest, review, redetermination, appeal.** A review of the charges made to an employer's account as set forth in the notice of charges referred to in subdivision 18 and a review of an employer's contribution rate as set forth in the notice of the employer's rate for any calendar year as provided in subdivision 19, may be had by the employer by filing with

the commissioner a written protest setting forth reasons therefor within 30 days from the date of the mailing of the notice of charges or contribution rate to the employer. The date shall appear on the notice. Upon receipt of the protest, the commissioner shall refer the matter to an official designated by the commissioner to review the charges appearing on the notice appealed from or the computations of the protesting employer's rate, as the case may be, to determine whether or not there has been any clerical error or error in computation in either case. The official shall either affirm or make a redetermination rectifying the charges or rate as the case may be, and a notice of the affirmation or redetermination shall immediately be mailed to the employer. If the employer is not satisfied with the affirmation or redetermination, the employer may appeal by filing a written notice with the department within ten days after the date of mailing appearing upon the redetermination. Proceedings on the appeal shall be conducted in accordance with section 268.105. The commissioner may at any time upon the commissioner's own motion correct any clerical error of the department resulting in charges against an employer's account or any error in the computation or the assignment of an employer's contribution rate.

*[For text of subd 21, see M.S.1994]*

**Subd. 22. Employment experience record transfer.** (a) When an employing unit succeeds to or acquires the organization, trade or business or substantially all the assets of another employing unit which at the time of the acquisition was an employer subject to this law, and continues such organization, trade or business, the experience rating record of the predecessor employer shall be transferred as of the date of acquisition to the successor employer for the purpose of rate determination.

(b) When an employing unit succeeds to or acquires a distinct severable portion of the organization, trade, business, or assets which is less than substantially all of the employing enterprises of another employing unit, the successor employing unit shall acquire the experience rating record attributable to the portion to which it has succeeded, and the predecessor employing unit shall retain the experience rating record attributable to the portion which it has retained, if (1) the successor continues the organization, trade, or business of the portion acquired, (2) the successor makes a written request to file an application for the transfer of the experience rating record for the severable portion acquired from the predecessor (3) and within 90 days from the date the application is mailed to the last known address of the successor the successor and predecessor employing units jointly sign and file a properly completed, written application as prescribed by the commissioner that furnishes the commissioner with sufficient information to substantiate the severable portion and to assign the appropriate total and taxable wages and benefit charges to the successor for experience rating purposes. Previously assigned contribution rates that have become final in accordance with subdivision 19 prior to the filing of the written request to file an application shall not be affected by the transfer.

(c) Employment with a predecessor employer shall not be deemed to have been terminated if similar employment is offered by the successor employer and accepted by the employee.

(d) An official, designated by the commissioner, upon the official's own motion or upon application of an employing unit shall determine if an employing unit is a successor within the meaning of this subdivision and shall mail notice of such determination to the last known address of the employing unit. The determination shall be final unless a written appeal is filed by the employing unit within 30 days after mailing of the notice of determination. Proceedings on the appeal shall be conducted in accordance with section 268.105.

(e) Notwithstanding subdivision 19, the commissioner may, as the result of any determination or decision regarding succession or nonsuccession, recompute the rate of all employers affected by the determination or decision for any year, including the year of the acquisition or succession and subsequent years, that is affected by the transfer or nontransfer of part or all of the experience rating record under this subdivision. This paragraph does not apply to rates that have become final in accordance with subdivision 19 prior to the filing of a written request to file an application for the transfer of a severable portion of the experience rating record as provided in paragraph (b).

*[For text of subs 24 to 34, see M.S.1994]*

**History:** 1995 c 54 s 3-7

## **268.08 PERSONS ELIGIBLE TO RECEIVE BENEFITS.**

*[For text of subs 1 to 2, see M.S.1994]*

Subd. 3. **Not eligible.** An individual shall not be eligible to receive benefits for any week with respect to which the individual is receiving, has received, or has filed a claim for remuneration in an amount equal to or in excess of the individual's weekly benefit amount in the form of:

(1) termination, severance, or dismissal payment or wages in lieu of notice whether legally required or not; provided that if a termination, severance, or dismissal payment is made in a lump sum, such lump sum payment shall be allocated over a period equal to the lump sum divided by the employee's regular pay while employed by such employer; provided such payment shall be applied for a period immediately following the last day of employment but not to exceed 28 calendar days provided that 50 percent of the total of any such payments in excess of eight weeks shall be similarly allocated to the period immediately following the 28 days; or

(2) vacation allowance paid directly by the employer for a period of requested vacation, including vacation periods assigned by the employer under the provisions of a collective bargaining agreement, or uniform vacation shutdown; or

(3) compensation for loss of wages under the workers' compensation law of this state or any other state or under a similar law of the United States, or under other insurance or fund established and paid for by the employer; or

(4) 50 percent of the pension payments from any fund, annuity or insurance maintained or contributed to by a base period employer including the armed forces of the United States if the employee contributed to the fund, annuity or insurance and all of the pension payments if the employee did not contribute to the fund, annuity or insurance; or

(5) 50 percent of a primary insurance benefit under title II of the Social Security Act, as amended, or similar old age benefits under any act of Congress or this state or any other state.

Provided, that if such remuneration is less than the benefits which would otherwise be due under sections 268.03 to 268.231, the individual shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration; provided, further, that if the appropriate agency of such other state or the federal government finally determines that the individual is not entitled to such benefits, this provision shall not apply. If the computation of reduced benefits, required by this subdivision, is not a whole dollar amount, it shall be rounded down to the next lower dollar amount.

*[For text of subs 3a and 4, see M.S.1994]*

Subd. 5a. **Self-employment.** (a) An individual who is determined to be likely to exhaust regular reemployment insurance benefits and is enrolled in a dislocated worker program shall be considered in approved training for purposes of this chapter for each week the individual is engaged on a full-time basis in activities, including training, relating to the establishment of a business and becoming self-employed. An individual who meets the requirements of this subdivision shall be considered unemployed for purposes of this chapter. Income earned from the self-employment activity shall not be considered for purposes of section 268.07, subdivision 2, paragraph (g). Under no circumstances shall more than five percent of the number of individuals receiving regular reemployment insurance benefits be actively enrolled in this program at any time. This subdivision shall not apply to persons claiming state or federal extended or additional benefits.

(b) This subdivision shall apply to weeks beginning after April 18, 1995, or weeks beginning after approval of this subdivision by the United States Department of Labor whichever date is later. This subdivision shall have no force or effect for any purpose as of the end of the week preceding the date when federal law no longer authorizes the provisions of this subdivision, unless such date is a Saturday in which case this subdivision shall have no force and effect for any purpose as of that date.

**Subd. 6. Services performed for state, municipalities, or charitable corporation.** Benefits based on service in employment defined in section 268.04, subdivision 12, clauses (7), (8) and (9), are payable in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service subject to this chapter; except that:

(a) Benefits based upon service performed in an instructional, research, or principal administrative capacity for an educational institution, shall not be paid for any week of unemployment commencing during the period between two successive academic years or terms, or during a similar period between two regular but not successive terms, or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if the individual performs the services in the first of the academic years or terms and if there is a contract or a reasonable assurance that the individual will perform services in any such capacity for an educational institution in the second of the academic years or terms;

(b) With respect to service performed in any capacity other than those capacities described in clause (a) of this subdivision, including instructional assistants, for an educational institution, benefits shall not be paid on the basis of these services to any individual for any week which commences during a period between two successive academic years or terms if the individual performs the services in the first of the academic years or terms and there is a reasonable assurance that the individual will perform the services in the second of the academic years or terms. An individual who has an agreement for a definite period of employment between academic years or terms shall be eligible for any weeks within that period the educational institution fails to provide employment. If benefits are denied to any individual under this clause and the individual was not offered an opportunity to perform the services in the second of the academic years or term, the individual shall be entitled to a retroactive payment of benefits for each week in which the individual filed a timely claim for benefits, but the claim was denied solely because of this clause;

(c) With respect to services described in clause (a) or (b), benefits payable on the basis of the services shall not be paid to any individual for any week which commences during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before the vacation period or holiday recess, and there is a reasonable assurance that the individual will perform the services in the period immediately following the vacation period or holiday recess;

(d) With respect to services described in clause (a) or (b), benefits shall not be payable on the basis of services in any capacity specified in clauses (a), (b), and (c) to any individual who performed those services in an educational institution while in the employ of an educational service agency. For purposes of this clause, "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing services to one or more educational institutions; and

(e) With respect to services to state and local government, or nonprofit organizations covered by section 501(c)(3) of the Internal Revenue Code of 1986, as amended through December 31, 1992, if services are provided to or on behalf of an educational institution, benefits must be denied under the same circumstances as described in clauses (a) to (d).

*[For text of subs 7 to 9, see M.S.1994]*

**History:** 1995 c 54 s 8,9; 1995 c 231 art 1 s 32

## **268.09 REEMPLOYMENT INSURANCE; DISQUALIFIED FROM BENEFITS.**

**Subdivision 1. Disqualifying conditions.** An individual separated from any employment under paragraph (a), (b), or (d) shall be disqualified for waiting week credit and benefits. For separations under paragraphs (a) and (b), the disqualification shall continue until four calendar weeks have elapsed following the individual's separation and the individual has earned eight times the individual's weekly benefit amount in insured work.

(a) **Voluntary leave.** The individual voluntarily and without good cause attributable to the employer discontinued employment with such employer. For the purpose of this paragraph, a separation from employment by reason of its temporary nature or for inability to pass a test or for inability to meet performance standards necessary for continuation of employment shall not be deemed voluntary.

A separation shall be for good cause attributable to the employer if it occurs as a consequence of sexual harassment. Sexual harassment means unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or other conduct or communication of a sexual nature when: (1) the employee's submission to such conduct or communication is made a term or condition of the employment, (2) the employee's submission to or rejection of such conduct or communication is the basis for decisions affecting employment, or (3) such conduct or communication has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment and the employer knows or should know of the existence of the harassment and fails to take timely and appropriate action.

(b) **Discharge for misconduct.** The individual was discharged for misconduct, not amounting to gross misconduct connected with work or for misconduct which interferes with and adversely affects employment.

(c) **Exceptions to disqualification.** An individual shall not be disqualified under paragraphs (a) and (b) under any of the following conditions:

(1) the individual voluntarily discontinued employment to accept employment offering substantially better conditions or substantially higher wages or both;

(2) the individual is separated from employment due to personal, serious illness provided that such individual has made reasonable efforts to retain employment.

An individual who is separated from employment due to the individual's illness of chemical dependency which has been professionally diagnosed or for which the individual has voluntarily submitted to treatment and who fails to make consistent efforts to maintain the treatment the individual knows or has been professionally advised is necessary to control that illness has not made reasonable efforts to retain employment.

(3) the individual accepts work from a base period employer which involves a change in location of work so that said work would not have been deemed to be suitable work under the provisions of subdivision 2 and within a period of 13 weeks from the commencement of said work voluntarily discontinues employment due to reasons which would have caused the work to be unsuitable under the provision of said subdivision 2;

(4) the individual left employment because of reaching mandatory retirement age and was 65 years of age or older;

(5) the individual is terminated by the employer because the individual gave notice of intention to terminate employment within 30 days. This exception shall be effective only through the calendar week which includes the date of intended termination, provided that this exception shall not result in the payment of benefits for any week for which the individual receives the individual's normal wage or salary which is equal to or greater than the weekly benefit amount;

(6) the individual is separated from employment due to the completion of an apprenticeship program, or segment thereof, approved pursuant to chapter 178;

(7) the individual voluntarily leaves part-time employment with a base period employer while continuing full-time employment if the individual attempted to return to part-time employment after being separated from the full-time employment, and if substantially the same part-time employment with the base period employer was not available for the individual;

(8) the individual is separated from employment based solely on a provision in a collective bargaining agreement by which an individual has vested discretionary authority in another to act on behalf of the individual;

(9) except as provided in paragraph (d), separations from part-time employment will not be disqualifying when the claim is based on sufficient full-time employment to establish a valid claim from which the claimant has been separated for nondisqualifying reasons; or

(10) the individual accepts employment which represents a substantial departure from the individual's customary occupation and experience and would not be deemed suitable work as defined under subdivision 2, paragraphs (a) and (b), and within a period of 30 days from the commencement of that work voluntarily discontinues the employment due to reasons which would have caused the work to be unsuitable under the provisions of subdivision 2 or, if in commission sales, because of a failure to earn gross commissions averaging an



amount equal to or in excess of the individual's weekly benefit amount. Other provisions notwithstanding, applying this provision precludes the use of these wage credits to clear a disqualification.

(d) **Discharge for gross misconduct.** The individual was discharged for gross misconduct connected with work or gross misconduct which interferes with and adversely affects the individual's employment. For a separation under this clause, the commissioner shall impose a total disqualification for the benefit year and cancel all of the wage credits from the last employer from whom the individual was discharged for gross misconduct connected with work.

For the purpose of this paragraph "gross misconduct" is defined as misconduct involving assault and battery or the malicious destruction of property or arson or sabotage or embezzlement or any other act, including theft, the commission of which amounts to a felony or gross misdemeanor. For an employee of a facility, as defined in section 626.5572, gross misconduct also includes misconduct involving an act of patient or resident abuse, financial exploitation, or recurring or serious neglect, as defined in section 626.5572 and applicable rules.

If an individual is convicted of a felony or gross misdemeanor for the same act or acts of misconduct for which the individual was discharged, the misconduct is conclusively presumed to be gross misconduct if it was connected with the individual's work.

(e) **Limited or no charge of benefits.** Benefits paid subsequent to an individual's separation under any of the foregoing paragraphs, excepting paragraphs (c)(3), (c)(5), and (c)(8), shall not be used as a factor in determining the future contribution rate of the employer from whose employment such individual separated.

Benefits paid subsequent to an individual's failure to accept an offer of suitable reemployment or to accept reemployment which offered substantially the same or better hourly wages and conditions of work as were previously provided by that employer, but was deemed unsuitable under subdivision 2, shall not be used as a factor in determining the future contribution rate of the employer whose offer of reemployment was not accepted or whose offer of reemployment was refused solely due to the distance of the available work from the individual's residence, the individual's own serious illness, the individual's other employment at the time of the offer, or if the individual is in training with the approval of the commissioner.

Benefits paid by another state as a result of Minnesota transferring wage credits under the federally required combined wage agreement shall not be directly charged to either the taxing or reimbursing employer.

(f) **Acts or omissions.** An individual who was employed by an employer shall not be disqualified for benefits under this subdivision for any acts or omissions occurring after separation from employment with the employer.

(g) **Disciplinary suspensions.** An individual shall be disqualified for waiting week credit and benefits for the duration of any disciplinary suspension of 30 days or less resulting from the individual's own misconduct. Disciplinary suspensions of more than 30 days shall constitute a discharge from employment.

*[For text of subs 2 to 8, see M.S.1994]*

**History:** 1995 c 229 art 3 s 15

## 268.10 DETERMINATION OF CLAIMS FOR BENEFITS; APPEALS.

*[For text of subd 1, see M.S.1994]*

**Subd. 2. Examination of claims; determination; appeal.** (1) An official, designated by the commissioner, shall promptly examine each claim for benefits filed to establish a benefit year pursuant to this section, and, on the basis of the facts found, shall determine whether or not such claims are valid, and if valid, the weekly benefit amount payable, the maximum benefit amount payable during the benefit year, and the date the benefit year terminates, and this determination shall be known as the determination of validity. Notice of the determination of validity or any redetermination as provided for in clause (4) shall be promptly given the claimant and all other interested parties. If within the time specified for

the filing of a protest as provided in subdivision 1, the employer makes an allegation of disqualification or raises an issue of the chargeability to the employer's account of benefits that may be paid on such claim, if the claim is valid, the issue thereby raised shall be promptly determined by said official and a notification of the determination delivered or mailed to the claimant and the employer. If an initial determination or a reemployment insurance judge's decision or the commissioner's decision awards benefits, the benefits shall be paid promptly regardless of the pendency of any appeal period or any appeal or other proceeding which may thereafter be taken. Except as provided in clause (6), if a reemployment insurance judge's decision modifies or reverses an initial determination awarding benefits, or if a commissioner's decision modifies or reverses a reemployment insurance judge's decision awarding benefits, any benefits paid under the award of such initial determination or reemployment insurance judge's decision shall be deemed erroneous payments.

(2) At any time within 24 months from the date of the filing of a valid claim for benefits by an individual, an official of the department or any interested party or parties raises an issue of claimant's eligibility for benefits for any week or weeks in accordance with the requirements of the provisions of sections 268.03 to 268.231 or any official of the department or any interested party or parties or benefit year employer raises an issue of disqualification in accordance with the rules of the commissioner, a determination shall be made thereon and a written notice thereof shall be given to the claimant and such other interested party or parties or benefit year employer. A determination issued under this clause which denies benefits for weeks for which the claimant has previously been paid benefits is an overpayment of those benefits subject to section 268.18.

(3) A determination issued pursuant to clauses (1) and (2) shall be final unless a written appeal therefrom is filed by a claimant or employer within 15 days after the mailing of the notice of the determination to the last known address or personal delivery of the notice. Every notice of determination shall contain a prominent statement indicating in clear language the method of appealing the determination, the time within which such an appeal must be made, and the consequences of not appealing the determination. An interested party may appeal from a determination of validity issued pursuant to clause (1) on the issue of whether an employing unit is an employer within the meaning of this chapter or whether services performed for an employer constitute employment within the meaning of this chapter. Proceedings on the appeal shall be conducted in accordance with section 268.105.

(4) At any time within 24 months from the date of the filing of a valid claim for benefits by an individual, the commissioner on the commissioner's own motion may reconsider a determination of validity made thereon and make a redetermination thereof on finding that an error in computation or identity or the crediting of wage credits has occurred in connection therewith or if the determination was made as a result of a nondisclosure or misrepresentation of a material fact. A determination or redetermination issued under this clause which denies benefits for weeks for which the claimant has previously been paid benefits is an overpayment of those benefits subject to section 268.18.

(5) However, the commissioner may refer any disputed claims directly to a reemployment insurance judge for hearing and decision in accordance with section 268.105 and the effect and status of such decision in such a case shall be the same as though the matter had been determined upon an appeal from an initial determination.

(6) If a reemployment insurance judge's decision affirms an initial determination awarding benefits or the commissioner affirms a reemployment insurance judge's decision awarding benefits, the decision, if finally reversed, shall result in a disqualification only for weeks following the week in which the decision reversing the award of benefits was issued and benefits paid for that week and previous weeks shall neither be deemed overpaid nor shall they be considered in determining any individual employer's future contribution rate under section 268.06.

Subd. 3. [Repealed, 1995 c 54 s 29]

Subd. 4. [Repealed, 1995 c 54 s 29]

Subd. 5. [Repealed, 1995 c 54 s 29]

Subd. 6. [Repealed, 1995 c 54 s 29]

Subd. 7. [Repealed, 1995 c 54 s 29]

Subd. 8. [Repealed, 1995 c 54 s 29]

Subd. 9. [Repealed, 1995 c 54 s 29]

Subd. 10. [Repealed, 1995 c 54 s 29]

**History:** 1995 c 54 s 10

### **268.105 REEMPLOYMENT INSURANCE HEARINGS; APPEALS.**

**Subdivision 1. Hearing.** Upon appeal the department shall set a time and place for a de novo hearing and give the interested parties written notice of it, by mail, not less than ten days prior to the time of the hearing. The commissioner shall by rule adopt a procedure by which reemployment insurance judges hear and decide appeals, subject to further appeal to the commissioner. The rules need not conform to common law or statutory rules of evidence and other technical rules of procedure. The written report of any employee of the department of economic security, except a determination, made in the regular course of the performance of the employee's duties, shall be competent evidence of the facts contained in it. After the conclusion of the hearing, upon the evidence presented, the reemployment insurance judge shall mail findings of fact and decision to all interested parties. The reemployment insurance judge's decision is final unless a further appeal is filed pursuant to subdivision 3.

**Subd. 2. Reemployment insurance judges.** The commissioner shall designate one or more impartial reemployment insurance judges to conduct hearings on appeals. The commissioner or authorized representative may personally hear or transfer to another reemployment insurance judge any proceedings pending before a reemployment insurance judge. Any proceedings removed to the commissioner or authorized representative shall be heard in accordance with subdivision 1.

**Subd. 3. Commissioner review.** Within 30 days after mailing of the reemployment insurance judge's decision, an interested party may appeal in writing and obtain a review by the commissioner or an authorized representative. The commissioner within the same period of time may on the commissioner's own motion order a review of a decision. Upon review, the commissioner or authorized representative shall, on the basis of the evidence submitted at the hearing before the reemployment insurance judge, make findings of fact and decision, or remand the matter back to the reemployment insurance judge for the taking of additional evidence and new findings and decision based on all the evidence. The commissioner may disregard the findings of fact of the reemployment insurance judge and examine the evidence and make any findings of fact as the evidence may, in the judgment of the commissioner require, and make any decision as the facts found by the commissioner require. The commissioner shall mail to all interested parties the findings of fact and decision. The decision of the commissioner is final unless judicial review is sought as provided by subdivision 7.

**Subd. 4. Testimonial powers.** In the discharge of the duties imposed by this section, the reemployment insurance judge, the commissioner, or authorized representative, may administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with the subject matter of the hearing. The subpoenas shall be enforceable through the district court in the district in which the subpoena is issued. Witnesses, other than an interested party or officers and employees of an interested party, subpoenaed pursuant to this section shall be allowed fees the same as witness fees in a civil action in district court. These fees shall be deemed a part of the expense of administering sections 268.03 to 268.231.

**Subd. 5. Use of information.** All testimony at any hearing conducted pursuant to subdivision 1 shall be recorded, but shall be transcribed only if the disputed claim is appealed further and is requested by a party, or as directed by the commissioner or an authorized representative. Testimony obtained under subdivision 1, may not be used or considered in any civil, administrative, or contractual proceeding, except by a local, state, or federal human rights group with enforcement powers, unless the proceeding is initiated by the department. No findings of fact or decision issued by a reemployment insurance judge or the commissioner or authorized representative may be held conclusive or binding or used as evidence in any separate or subsequent action in any other forum, except proceedings provided for under this chapter, regardless of whether the action involves the same or related parties or involves the same facts.

**Subd. 6. Representation; fees.** In any proceeding under these sections, a party may be represented by any agent. Except for services provided by an attorney-at-law, a claimant for benefits shall not be charged fees of any kind in a proceeding before a reemployment insurance judge, the commissioner or authorized representative, or by any court or any of its officers.

**Subd. 7. Court of appeals; attorney for commissioner.** The court of appeals may, by writ of certiorari to the commissioner, review any decision of the commissioner provided a petition for the writ is filed and served upon the commissioner and the adverse party within 30 days of the mailing of the commissioner's decision. Any interested party, except a claimant for benefits, upon the service of the writ shall furnish a cost bond to the commissioner in accordance with rule 107 of the rules of civil appellate procedure. The commissioner shall be deemed to be a party to any judicial action involving any decision and shall be represented by any qualified attorney who is a regular salaried employee of the department of economic security and has been designated by the commissioner for that purpose or, at the commissioner's request, by the attorney general.

**History:** 1995 c 54 s 11

## 268.12 CREATION.

*[For text of subs 2 to 8, see M.S.1994]*

Subd. 9. [Repealed, 1995 c 54 s 29]

Subd. 10. [Repealed, 1995 c 54 s 29]

*[For text of subd 11, see M.S.1994]*

**Subd. 12. Information.** Except as hereinafter otherwise provided, data gathered from any employing unit or individual pursuant to the administration of sections 268.03 to 268.231, and from any determination as to the benefit rights of any individual are private data on individuals or nonpublic data not on individuals as defined in section 13.02, subdivisions 9 and 12, and may not be disclosed except pursuant to this subdivision or a court order. These data may be disseminated to and used by the following agencies without the consent of the subject of the data:

- (a) state and federal agencies specifically authorized access to the data by state or federal law;
- (b) any agency of this or any other state; or any federal agency charged with the administration of an employment security law or the maintenance of a system of public employment offices;
- (c) local human rights groups within the state which have enforcement powers;
- (d) the department of revenue shall have access to department of economic security private data on individuals and nonpublic data not on individuals only to the extent necessary for enforcement of Minnesota tax laws;
- (e) public and private agencies responsible for administering publicly financed assistance programs for the purpose of monitoring the eligibility of the program's recipients;
- (f) the department of labor and industry on an interchangeable basis with the department of economic security subject to the following limitations and notwithstanding any law to the contrary:
  - (1) the department of economic security shall have access to private data on individuals and nonpublic data not on individuals for uses consistent with the administration of its duties under sections 268.03 to 268.231; and
  - (2) the department of labor and industry shall have access to private data on individuals and nonpublic data not on individuals for uses consistent with the administration of its duties under state law;
- (g) the department of trade and economic development may have access to private data on individual employing units and nonpublic data not on individual employing units for its internal use only; when received by the department of trade and economic development, the data remain private data on individuals or nonpublic data;

(h) local and state welfare agencies for monitoring the eligibility of the data subject for assistance programs, or for any employment or training program administered by those agencies, whether alone, in combination with another welfare agency, or in conjunction with the department of economic security;

(i) local, state, and federal law enforcement agencies for the sole purpose of ascertaining the last known address and employment location of the data subject, provided the data subject is the subject of a criminal investigation; and

(j) the department of health may have access to private data on individuals and nonpublic data not on individuals solely for the purposes of epidemiologic investigations.

Data on individuals and employing units which are collected, maintained, or used by the department in an investigation pursuant to section 268.18, subdivision 3, are confidential as to data on individuals and protected nonpublic data not on individuals as defined in section 13.02, subdivisions 3 and 13, and shall not be disclosed except pursuant to statute or court order or to a party named in a criminal proceeding, administrative or judicial, for preparation of a defense.

Tape recordings and transcripts of recordings of proceedings conducted in accordance with section 268.105 and exhibits received into evidence at those proceedings are private data on individuals and nonpublic data not on individuals and shall be disclosed only pursuant to the administration of section 268.105, or pursuant to a court order.

Aggregate data about employers compiled from individual job orders placed with the department of economic security are private data on individuals and nonpublic data not on individuals as defined in section 13.02, subdivisions 9 and 12, if the commissioner determines that divulging the data would result in disclosure of the identity of the employer. The general aptitude test battery and the nonverbal aptitude test battery as administered by the department are also classified as private data on individuals or nonpublic data.

Data on individuals collected, maintained, or created because an individual applies for benefits or services provided by the energy assistance and weatherization programs administered by the department of economic security is private data on individuals and shall not be disseminated except pursuant to section 13.05, subdivisions 3 and 4.

Data gathered by the department pursuant to the administration of sections 268.03 to 268.231 shall not be made the subject or the basis for any suit in any civil proceedings, administrative or judicial, unless the action is initiated by the department.

Subd. 13. [Repealed, 1995 c 54 s 29]

**History:** 1995 c 54 s 12

## 268.16 COLLECTION OF CONTRIBUTIONS.

*[For text of subs 1 to 2, see M.S.1994]*

Subd. 3a. **Costs.** Any employing unit which fails to make and submit reports or pay any contributions or reimbursement when due is liable to the department for any recording fees, sheriff fees, costs incurred by referral to any public or private agency outside the department, or litigation costs incurred in the collection of the amounts due or obtaining the reports.

If any check or money order, in payment of any amount due under this chapter, is not honored when presented for payment, the employing unit will be assessed a fee of \$20 which is in addition to any other fees provided by this chapter. The fee shall be assessed regardless of the amount of the check or money order or the reason for nonpayment with the exception of processing errors made by a financial institution.

Costs due under this subdivision shall be paid to the department and credited to the administration fund.

*[For text of subs 4 and 5, see M.S.1994]*

Subd. 6. **Adjustments, refunds.** If an employer makes an application for an adjustment of any amount paid as contributions or interest thereon, to be applied against subsequent contribution payments, or for a refund thereof because such adjustment cannot be made, and the payment was made within four years prior to the year in which the application is made, and if

the commissioner shall determine that payment of such contributions or interest or any portion thereof was erroneous, the commissioner shall allow such employer to make an adjustment thereof, without interest, in connection with subsequent contribution payments by the employer, or if such adjustment cannot be made, the commissioner shall refund from the fund to which such payment has been credited, without interest, the amount erroneously paid. For like cause and within the same period, adjustment or refund may be so made on the commissioner's own initiative.

In the event that any application for adjustment or refund is denied in whole or in part, a written notice of such denial shall be mailed to the applicant. Within 30 days after the mailing of such notice of denial to the applicant's last known address, the applicant may request, in writing, that the commissioner grant a hearing for the purpose of reconsidering the facts submitted and to consider any additional information. Proceedings on the appeal shall be conducted in accordance with section 268.105.

*[For text of subs 7 and 8, see M.S.1994]*

**Subd. 9. Prior decisions.** In the event a final decision on an appeal under section 268.105 determines the amount of contributions due under sections 268.03 to 268.231, then, if the amount, together with interest and penalties, is not paid within 30 days after the decision, the provisions of section 268.161 apply. The commissioner shall proceed thereunder, substituting a certified copy of the final decision in place of the contribution report. A final decision on an appeal under section 268.105 is conclusive for all the purposes of sections 268.03 to 268.231 except as otherwise provided, and, together with the records therein made, shall be admissible in any subsequent judicial proceeding involving liability for contributions.

**History:** 1995 c 54 s 13-15

## **268.161 CONTRIBUTION AND REIMBURSEMENT LIEN.**

*[For text of subs 1 to 7, see M.S.1994]*

**Subd. 8. Levy.** (a) If any contribution or reimbursement payable to the department is not paid when due, the amount may be collected by the commissioner, a duly authorized representative, or by the sheriff of any county to whom the commissioner has issued a warrant, who may levy upon all property and rights of property of the person liable for the contribution or reimbursement, (except that which is exempt from execution pursuant to section 550.37), or property on which there is a lien provided by subdivision 1. The terms "contribution or reimbursement" shall include any penalty, interest, and costs. The term "levy" includes the power of distraint and seizure by any means. Before a levy is made or warrant issued, notice and demand for payment of the amount due shall be given to the person liable for the contribution or reimbursement at least ten days prior to the levy or issuing of a warrant.

(b) Upon the commissioner issuing a warrant, the sheriff shall proceed within 60 days to levy upon the rights to property of the employer within the employer's county, except the homestead and household goods of the employer and property of the employer not liable to attachment, garnishment, or sale on any final process issued from any court under the provisions of section 550.37, and shall sell so much thereof as is required to satisfy the contribution, reimbursement, interest, and penalties, together with the commissioner's costs. The sales shall, as to their manner, be governed by the law applicable to sales of like property on execution issued against property upon a judgment of a court of record. The proceeds of the sales, less the sheriff's costs, shall be turned over to the commissioner, who shall retain a part thereof as is required to satisfy the contribution, reimbursement, interest, penalties, and costs, and pay over any balance to the employer.

(c) If the commissioner has reason to believe that collection of the contribution or reimbursement is in jeopardy, notice and demand for immediate payment of the amount may be made by the commissioner. If the contribution or reimbursement is not paid, the commissioner may proceed to collect by levy or issue a warrant without regard to the ten-day period provided herein.

(d) In making the execution of the levy and in collecting the contribution or reimbursement due, the commissioner shall have all of the powers provided in chapter 550 and in any

other law for purposes of effecting an execution against property in this state. The sale of property levied upon and the time and manner of redemption therefrom shall be as provided in chapter 550. The seal of the court, subscribed by the court administrator, as provided in section 550.04, shall not be required. The levy for collection of contributions or reimbursements may be made whether or not the commissioner has commenced a legal action for collection of the amount.

(e) Where a jeopardy assessment or any other assessment has been made by the commissioner, the property seized for collection of the contribution or reimbursement shall not be sold until any determination of liability, rate, or benefit charges has become final. No sale shall be made unless the contribution or reimbursement remain unpaid for a period of more than 30 days after the determination becomes final. Seized property may be sold at any time if:

(1) the employer consents in writing to the sale; or

(2) the commissioner determines that the property is perishable or may become greatly reduced in price or value by keeping, or that the property cannot be kept without great expense.

(f) Where a levy has been made to collect contributions or reimbursements pursuant to this subdivision and the property seized is properly included in a formal proceeding commenced under sections 524.3-401 to 524.3-505 and maintained under full supervision of the court, the property shall not be sold until the probate proceedings are completed or until the court so orders.

(g) The property seized shall be returned by the commissioner if the owner gives a surety bond equal to the appraised value of the owner's interest in the property, as determined by the commissioner, or deposits with the commissioner security in a form and amount as the commissioner deems necessary to insure payment of the liability, but not more than twice the liability.

(h) Notwithstanding any other law to the contrary, if a levy or sale pursuant to this section would irreparably injure rights in property which the court determines to be superior to rights of the state in the property, the district court may grant an injunction to prohibit the enforcement of the levy or to prohibit the sale.

(i) Any person who fails or refuses to surrender without reasonable cause any property or rights to property subject to levy upon demand by the commissioner shall be personally liable to the department in an amount equal to the value of the property or rights not so surrendered, but not exceeding the amount of contribution or reimbursement for the collection of which the levy has been made. Any amount recovered under this subdivision shall be credited against the contribution or reimbursement liability for the collection of which the levy was made. The term "person" includes an officer or employee of a corporation or a member or employee of a partnership who, as an officer, employee, or member is under a duty to surrender the property or rights to property or to discharge the obligation.

(j) Any action taken by the commissioner pursuant to this subdivision shall not constitute an election by the department to pursue a remedy to the exclusion of any other remedy.

(k) After the commissioner has seized the property of any person, that person may, upon giving 48 hours notice to the commissioner and to the court, bring a claim for equitable relief before the district court for the release of the property to the employer upon terms and conditions as the court may deem equitable.

(l) Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made who, upon demand by the commissioner, surrenders the property or rights to property or who pays a liability under this subdivision shall be discharged from any obligation or liability to the person liable for the payment of the delinquent contribution or reimbursement with respect to the property or rights to property so surrendered or paid.

(m) Notwithstanding any other provisions of law to the contrary, the notice of any levy authorized by this section may be served by mail or by delivery by an employee or agent of the department of economic security.

(n) It shall be lawful for the commissioner to release the levy upon all or part of the property or rights to property levied upon if the commissioner determines that the release will

facilitate the collection of the liability, but the release shall not operate to prevent any subsequent levy. If the commissioner determines that property has been wrongfully levied upon, it shall be lawful for the commissioner to return:

- (1) the specific property levied upon, at any time; or
- (2) an amount of money equal to the amount of money levied upon, at any time before the expiration of nine months from the date of levy.

(o) Notwithstanding section 52.12, a levy by the commissioner made pursuant to the provisions of this section upon an employer's funds on deposit in a financial institution located in this state, shall have priority over any unexercised right of setoff of the financial institution to apply the levied funds toward the balance of an outstanding loan or loans owed by the employer to the financial institution. A claim by the financial institution that it exercised its right to setoff prior to the levy by the commissioner must be substantiated by evidence of the date of the setoff, and shall be verified by the sworn statement of a responsible corporate officer of the financial institution. Furthermore, for purposes of determining the priority of any levy made under this section, the levy shall be treated as if it were an execution made pursuant to chapter 550.

**Subd. 9. Personal liability.** Any officer, director, or employee of a corporation or any manager, governor, member, or employee of a limited liability company which is an employer under sections 268.03 to 268.231, who

(1) either individually or jointly with others, have or should have had control of, supervision over, or responsibility for the filing of the tax reports or the making of payments under this chapter, and

(2) willfully fails to file the reports or to make payments as required, shall be personally liable for contributions or reimbursement, including interest, penalties, and costs in the event the corporation does not pay to the department those amounts for which the employer is liable.

For purposes of this subdivision, "willfulness" means that the facts demonstrate that the responsible party used or allowed the use of corporate or company assets to pay other creditors knowing that the payments required under this chapter were unpaid. An evil motive or intent to defraud is not necessary to satisfy the willfulness requirement. Any personal representative of the estate of a decedent or fiduciary who voluntarily distributes the assets filed therein without reserving a sufficient amount to pay the contributions, interest, and penalties due pursuant to this chapter shall be personally liable for the deficiency.

The personal liability of any person as provided herein shall survive dissolution, reorganization, receivership, or assignment for the benefit of creditors. For the purposes of this subdivision, all wages paid by the corporation shall be considered earned from the person determined to be personally liable.

An official designated by the commissioner shall make an initial determination as to the personal liability under this section. The determination shall be final unless the person found to be personally liable shall within 30 days after mailing of notice of determination to the person's last known address file a written protest. Upon receipt of the protest, the official shall reexamine the personal liability determination and either affirm or redetermine the assessment of personal liability and a notice of the affirmation or redetermination shall be mailed to the person's last known address. The affirmation or redetermination shall become final unless a written appeal is filed within ten days of the date of mailing. Proceedings on the appeal shall be conducted in accordance with section 268.105.

**History:** 1995 c 54 s 16,17

## 268.162 LIABILITY OF SUCCESSOR.

*[For text of subd 1, see M.S.1994]*

**Subd. 2. Reasonable value.** An official, designated by the commissioner, upon the official's own motion or upon application of the potential successor, shall determine the reasonable value of the organization, trade, or business or assets acquired by the successor based on available information. The determination shall be final unless the successor, within 30 days after the mailing of notice of the determination to the successor's last known address, files a



written appeal from it. Proceedings on the appeal shall be conducted in accordance with section 268.105.

*[For text of subs 3 and 4, see M.S.1994]*

**History:** 1995 c 54 s 18

### **268.163 LIABILITY OF THIRD PARTIES TO ASSURE PAYMENT OF AMOUNTS DUE FROM CONTRACTORS, SUBCONTRACTORS, AND EMPLOYEE LEASING FIRMS.**

*[For text of subs 1 and 2, see M.S.1994]*

**Subd. 3. Determination of liability.** An official designated by the commissioner shall make an initial determination as to the liability under this section. The determination shall be final unless the contractor or person found to be liable files a written appeal within 30 days after mailing of notice of determination to the person's last known address. Proceedings on the appeal shall be conducted in accordance with section 268.105.

**History:** 1995 c 54 s 19

### **268.164 UNEMPLOYMENT TAX CLEARANCES; ISSUANCES OF LICENSES.**

*[For text of subs 1 and 2, see M.S.1994]*

**Subd. 3. Notice and right to hearing.** At least 30 days before the commissioner notifies a licensing authority pursuant to subdivision 1, a notice and demand for payment of the amount due shall be given to the applicant. If the applicant disputes the amount due, the applicant must request a hearing in writing within 30 days after the mailing of the notice and demand for payment to the applicant's last known address. Proceedings on the appeal of the amount due shall be conducted in accordance with section 268.105.

*[For text of subs 4 and 5, see M.S.1994]*

**History:** 1995 c 54 s 20

### **268.18 RETURN OF BENEFITS; OFFENSES.**

**Subdivision 1. Erroneous payments.** (a) Any claimant for benefits who, by reason of the claimant's own mistake or through the error of any individual engaged in the administration of sections 268.03 to 268.231 or because of a determination or redetermination issued pursuant to section 268.10, subdivision 2, has received any sum as benefits to which the claimant was not entitled under these sections, shall promptly return those benefits in cash to the nearest office of the Minnesota department of economic security. If the claimant fails to return the benefits, the department of economic security shall, as soon as it discovers the erroneous payment, determine the amount due and notify the individual to return it.

(b) Unless the claimant files a written appeal with the department of economic security within 15 days after the mailing of the notice of determination to the claimant's last known address or personal delivery of the notice, the determination shall become final. Proceedings on the appeal shall be conducted in accordance with section 268.105.

(c) The commissioner of the department of economic security is authorized to deduct from any future benefits payable to the claimant under these sections in either the current or any subsequent benefit year an amount equivalent to the overpayment determined, except that no single deduction shall exceed 50 percent of the amount of the payment from which the deduction is made, or the overpayment may be collected the same as contributions or reimbursements under section 268.161. If a claimant has been overpaid benefits under the law of another state due to error and that state certifies to the department the facts involved and that the individual is liable under its law to repay the benefits and requests the department to recover the overpayment, the commissioner is authorized to deduct from future benefits payable to the claimant in either the current or any subsequent benefit year an amount equivalent to the amount of overpayment determined by that state, except that no single deduction shall

exceed 50 percent of the amount of the payment from which the deduction is made. Benefits paid for weeks more than three years prior to the discovery of error are not erroneous payments.

(d) Notwithstanding paragraph (a), the commissioner shall waive recovery of an overpayment if a reemployment insurance judge or the commissioner's representative determines the overpayment resulted from an administrative failure to identify that a claimant's wage credits were not earned in covered employment.

**Subd. 2. Fraud.** Any claimant who files a claim for or receives benefits by knowingly and willfully misrepresenting or misstating any material fact or by knowingly and willfully failing to disclose any material fact which would make the claimant ineligible for benefits under sections 268.03 to 268.231 is guilty of fraud. After the discovery of facts by the commissioner indicating fraud in claiming or obtaining benefits under sections 268.03 to 268.231, the commissioner is hereby authorized to make a determination that the claimant was ineligible for each week with reference to which benefits were claimed or obtained by fraud for the amount as was in excess of what the claimant would have been entitled to had the claimant not made the fraudulent statements or failed to disclose any material facts. The commissioner also may disqualify an individual from benefits for one to 52 weeks in which the claimant is otherwise eligible for benefits following the week in which the fraud was determined. A disqualification imposed for fraud shall not be removed by subsequent insured work or the expiration of a benefit year but shall not apply to any week more than 104 weeks after the week in which the fraud was determined. The claimant shall promptly repay in cash to the department of economic security any benefits fraudulently obtained. Unless the claimant files a written appeal with the department of economic security within 15 days after the mailing of the notice of determination to the claimant's last known address or personal delivery of the notice, the determination shall become final. Proceedings on the appeal shall be conducted in accordance with section 268.105. The commissioner is hereby authorized to deduct from future benefits payable to the claimant in either the current or any subsequent benefit year an amount equivalent to the amount of overpayment determined disregarding the 50 percent limitation provided for in subdivision 1 or the overpayment may be collected the same as contributions or reimbursements under section 268.161. If a claimant has been overpaid benefits under the law of another state due to fraud and that state certifies to the department the facts involved and that the individual is liable to repay the benefits and requests the department to recover the overpayment, the commissioner is authorized to deduct from future benefits payable to the claimant in either the current or any subsequent benefit year an amount equivalent to the amount of overpayment determined by that state disregarding the 50 percent limitation provided for in subdivision 1. A determination of fraud may be made at any time.

*[For text of subd 2a, see M.S.1994]*

**Subd. 3. False representations; concealment of facts; penalty.** (a) Whoever obtains, or attempts to obtain, or aids or abets any person to obtain by means of a willfully false statement or representation, by intentional concealment of a material fact, or by impersonation or other fraudulent device, benefits to which the person is not entitled or benefits greater than that to which the person is entitled under this chapter, or under the employment security law of any state or of the federal government or of a foreign government, either personally or for any other person, shall be guilty of theft and shall be sentenced pursuant to section 609.52, subdivision 3, clauses (2), (3)(a), (c), and (d), (4), and (5). The amount of the benefits incorrectly paid shall be the difference between the amount of benefits actually received and the amount which the person would have been entitled under state and federal law had the department been informed of all material facts.

(b) Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining a subject employer or to avoid or reduce any contribution or other payment required from an employing unit under this chapter or under the employment security law of any state or of the federal government, or who willfully fails or refuses to make any such contributions or other payment at the time required shall be

guilty of a gross misdemeanor unless the benefit underpayment, contribution, or other payment involved exceeds \$250, in which event the person is guilty of a felony.

(c) Any person who willfully fails to produce or permit the inspection or copying of books, papers, records, or memoranda as required or when requested under section 268.12, subdivision 8, or to furnish any required reports other than contribution reports shall be guilty of a gross misdemeanor.

*[For text of subs 4 and 5, see M.S.1994]*

**Subd. 6. Employer misconduct; penalty.** If the commissioner finds that any employing unit or any employee, officer, or agent of any employing unit, is in collusion with any employee for the purpose of assisting the claimant to receive benefits illegally, the employing unit shall be penalized \$500 or an amount equal to the amount of benefits determined to be overpaid, whichever is greater.

If the commissioner finds that any part of any employer's contribution deficiency is due to fraud with intent to avoid payment of contributions to the fund, 50 percent of the total amount of the deficiency or \$500, whichever is greater, shall be assessed as a penalty against the employer and collected in addition to the deficiency.

Penalties assessed under this section shall be in addition to any other penalties provided for by sections 268.03 to 268.231 and be subject to the same collection procedures that apply to past due contributions under this chapter. Penalties under this section shall be paid to the department and credited to the contingent fund.

The assessment of the penalty shall be final unless the employer files a written appeal with the department within 15 days after the notice of determination to the employer's last known address. Proceedings on the appeal shall be conducted in accordance with section 268.105.

**History:** 1995 c 54 s 21-24

### 268.363 ADVISORY COMMITTEE.

A 13-member advisory committee is established as provided under section 15.059 to assist the commissioner in selecting eligible organizations to receive program grants, evaluating the final reports of each organization, and providing recommendations to the legislature. Notwithstanding section 15.059, the advisory committee shall not expire before June 30, 1995. Members of the committee may be reimbursed for expenses but may not receive any other compensation for service on the committee. The advisory committee consists of representatives of the commissioners of children, families, and learning, human services, and economic security; a representative of the chancellor of vocational education; a representative of the commissioner of the housing finance agency; the director of the office of jobs policy; and seven public members appointed by the governor. Each of the following groups must be represented by a public member experienced in working with targeted youth: labor organizations, local educators, community groups, consumers, local housing developers, youth between the ages of 16 and 24 who have a period of homelessness, and other homeless persons. At least three of the public members must be from outside of the metropolitan area as defined in section 473.121, subdivision 2. The commissioner may provide staff to the advisory committee to assist it in carrying out its purpose.

**History:** 1Sp1995 c 3 art 16 s 13

### 268.38 TRANSITIONAL HOUSING PROGRAMS.

*[For text of subd 1, see M.S.1994]*

**Subd. 2. Establishment and administration.** A transitional housing program is established to be administered by the commissioner. The commissioner may make grants to eligible recipients or enter into agreements with community action agencies or other public or private nonprofit agencies to make grants to eligible recipients to initiate, maintain, or expand programs to provide transitional housing and support services for persons in need of transitional housing, which may include up to six months of follow-up support services for persons who complete transitional housing as they stabilize in permanent housing. The com-

coalition, community action agencies, and the legal aid society. The consulting team shall review grant applications and recommend awards to eligible organizations that meet requirements for receiving a grant under this section.

**Subd. 3. Applicants.** (a) Interested eligible organizations may apply to the commissioner for grants under this section. Two or more eligible organizations may jointly apply for a grant. Priority shall be given to community action agencies in greater Minnesota and to either community action agencies or neighborhood based nonprofit organizations in cities of the first class. Of the total annual appropriation, 12.5 percent may be used for administrative purposes. The commissioner may deviate from this percentage if a grantee can justify the need for a larger administrative allowance. Of this amount, up to five percent may be used by the commissioner for state administrative purposes. Applications must provide information requested by the commissioner, including at least the information required to assess the factors listed in paragraph (d).

(b) The commissioner shall coordinate with the commissioner of health who shall consult with boards of health to provide swab team services for purposes of secondary prevention. The priority for swab teams created by grants to eligible organizations under this section shall be work assigned by the commissioner of health, or by a board of health if so designated by the commissioner of health, to provide secondary prevention swab team services to fulfill the requirements of section 144.9504, subdivision 6, in response to a lead order. Swab teams assigned work under this section by the commissioner, that are not engaged daily in fulfilling the requirements of section 144.9504, subdivision 6, must deliver swab team services in response to elevated blood lead levels as defined in section 144.9501, subdivision 9, where lead orders were not issued, and for purposes of primary prevention in census tracts known to be in areas at high risk for toxic lead exposure as described in section 144.9503, subdivision 2.

(c) Any additional money shall be used for grants to establish swab teams for primary prevention under section 144.9503, in census tracts in areas at high risk for toxic lead exposure as determined under section 144.9503, subdivision 2.

(d) In evaluating grant applications, the commissioner shall consider the following criteria:

- (1) the use of lead contractors and lead workers for residential swab team services;
- (2) the participation of neighborhood groups and individuals, as swab team workers, in areas at high risk for toxic lead exposure;
- (3) plans for the provision of swab team services for primary and secondary prevention as required under subdivision 4;
- (4) plans for supervision, training, career development, and postprogram placement of swab team members;
- (5) plans for resident and property owner education on lead safety;
- (6) plans for distributing cleaning supplies to area residents and educating residents and property owners on cleaning techniques;
- (7) sources of other funding and cost estimates for training, lead inspections, swab team services, equipment, monitoring, testing, and administration;
- (8) measures of program effectiveness;
- (9) coordination of program activities with other federal, state, and local public health, job training, apprenticeship, and housing renovation programs including the emergency jobs program under sections 268.672 to 268.881; and
- (10) prior experience in providing swab team services.

**Subd. 4. Lead contractors.** (a) Eligible organizations and lead contractors may participate in the swab team program. An eligible organization receiving a grant under this section must assure that all participating lead contractors are licensed and that all swab team workers are certified by the department of health under section 144.9505. Eligible organizations and lead contractors may distinguish between interior and exterior services in assigning duties and may participate in the program by:

- (1) providing on-the-job training for swab team workers;
- (2) providing swab team services to meet the requirements of sections 144.9503, subdivision 4, and 144.9504, subdivision 6;

(3) providing a removal and replacement component using skilled craft workers under subdivision 7;

(4) providing lead testing according to subdivision 7a;

(5) providing lead dust cleaning supplies, as described in section 144.9503, subdivision 5, paragraph (b), to residents; or

(6) having a swab team worker instruct residents and property owners on appropriate lead control techniques, including the lead-safe directives developed by the commissioner of health.

(b) Participating lead contractors must:

(1) demonstrate proof of workers' compensation and general liability insurance coverage;

(2) be knowledgeable about lead abatement requirements established by the Department of Housing and Urban Development and the Occupational Safety and Health Administration and lead hazard reduction requirements and lead-safe directives of the commissioner of health;

(3) demonstrate experience with on-the-job training programs;

(4) demonstrate an ability to recruit employees from areas at high risk for toxic lead exposure; and

(5) demonstrate experience in working with low-income clients.

**Subd. 5. Swab team workers.** Each worker engaged in swab team services established under this section must have blood lead concentrations below 15 micrograms of lead per deciliter of whole blood as determined by a baseline blood lead screening. Any organization receiving a grant under this section is responsible for lead screening and must assure that all swab team workers meet the standards established in this subdivision. Grantees must use appropriate workplace procedures including following the lead-safe directives developed by the commissioner of health to reduce risk of elevated blood lead levels. Grantees and participating contractors must report all employee blood lead levels that exceed 15 micrograms of lead per deciliter of whole blood to the commissioner of health.

**Subd. 6. On-the-job training component.** (a) Programs established under this section must provide on-the-job training for swab team workers. Training methods must follow procedures established under section 144.9506.

(b) Swab team workers must receive monetary compensation equal to the prevailing wage as defined in section 177.42, subdivision 6, for comparable jobs in the licensed contractor's principal business.

**Subd. 7. Removal and replacement component.** (a) Within the limits of the available appropriation and if a need is identified by a lead inspector, the commissioner may establish a component for removal and replacement of deteriorated paint in residential properties according to the following criteria:

(1) components within a residence must have both deteriorated lead-based paint and substrate damage beyond repair or rotting wooden framework to be eligible for removal and replacement;

(2) all removal and replacement must be done using least-cost methods and following lead-safe directives;

(3) whenever windows and doors or other components covered with deteriorated lead-based paint have sound substrate or are not rotting, those components should be repaired, sent out for stripping or be planed down to remove deteriorated lead-based paint or covered with protective guards instead of being replaced, provided that such an activity is the least cost method of providing the swab team service;

(4) removal and replacement or repair must be done by lead contractors using skilled craft workers or trained swab team members; and

(5) all craft work that requires a state license must be supervised by a person with a state license in the craft work being supervised. The grant recipient may contract for this supervision.

(b) The program design must:

(1) identify the need for on-the-job training of swab team workers to be removal and replacement workers; and

(2) describe plans to involve appropriate groups in designing methods to meet the need for training swab team workers.

**Subd. 7a. Testing and evaluation.** (a) Testing of the environment is not necessary by swab teams whose work is assigned by the commissioner of health or a designated board of health under section 144.9504. The commissioner of health or designated board of health shall share the analytical testing data collected on each residence for purposes of secondary prevention under section 144.9504 with the swab team workers in order to provide constructive feedback on their work and to the commissioner for the purposes set forth in paragraph (c).

(b) For purposes of primary prevention evaluation, the following samples must be collected: pretesting and posttesting of one noncarpeted floor dust lead sample and a notation of the extent and location of bare soil and of deteriorated lead-based paint. The analytical testing data collected on each residence for purposes of primary prevention under section 144.9503, shall be shared with the swab team workers in order to provide constructive feedback on their work and to the commissioner for the purposes set forth in paragraph (c).

(c) The commissioner of health shall establish a program in cooperation with the commissioner to collect appropriate data as required under paragraphs (a) and (b), in order to conduct an ongoing evaluation of swab team services for primary and secondary prevention. Within the limits of available appropriations, the commissioner of health shall conduct or contract with the commissioner, on up to 1,000 residences which have received primary or secondary prevention swab team services, a postremediation evaluation, on at least a quarterly basis for a period of at least two years for each residence. The evaluation must note the condition of the paint within the residence, the extent of bare soil on the grounds, and collect and analyze one noncarpeted floor dust lead sample. The data collected shall be evaluated to determine the efficacy of providing swab team services as a method of reducing lead exposure in young children. In evaluating this data, the commissioner of health shall consider city size, community location, historic traffic flow, soil lead level of the property by area or census tract, distance to industrial point sources that emit lead, season of the year, age of the housing, age, and number of children living at the residence, the presence of pets that move in and out of the residence, and other relevant factors as the commissioner of health may determine. This evaluation of the swab team program may be paid from amounts appropriated to the department of economic security for providing swab team services.

**Subd. 8. Program benefits.** As a condition of providing swab team services under this section, an organization may require a property owner to not increase rents on a property solely as a result of a substantial improvement made with public funds under the programs in this section.

*[For text of subd 9, see M.S.1994]*

**Subd. 10. Report.** Beginning in the year in which an appropriation is received, the commissioner shall prepare and submit a swab team program report to the legislature and the governor by December 31, and every two years thereafter. At a minimum, the report must describe the organizations that received grants under this section, the cost, nature, and extent of swab team services provided by each grantee, an evaluation of the efficacy of providing swab team services under subdivision 7a, and recommendations for program changes.

**History:** 1995 c 213 art 2 s 1-10

**268.9755** [Repealed, 1995 c 131 s 3]

## **268.9781 WORKER ADJUSTMENT SERVICES PLANS.**

*[For text of subd 1, see M.S.1994]*

**Subd. 2. Grantees.** Entities authorized to submit a worker adjustment services plan include substate grantees and up to six additional eligible organizations. Criteria for selecting the six authorized nonsubstate grantee eligible organizations shall be established by the commissioner, in consultation with the workforce development council. The criteria include, but are not limited to:

- (1) the capacity to deliver worker adjustment services;
- (2) an identifiable constituency from which eligible dislocated workers may be drawn;
- (3) a demonstration of a good faith effort to establish coordination agreements with substate grantees in whose geographic area the organization would be operating;
- (4) the capability to coordinate delivery of worker adjustment services with other appropriate programs and agencies, including educational institutions, employment service, human service agencies, and economic development agencies; and
- (5) sufficient administrative controls to ensure fiscal accountability.

*[For text of subd 3, see M.S.1994]*

**Subd. 4. Substate grantee funding.** (a) Funds allocated to substate grantees under section 268.022 for expeditious response activities and worker adjustment services under this section shall be allocated as follows:

(1) one-half of available funds shall be allocated to substate grantees based on an allocation formula prescribed by the commissioner, in consultation with the workforce development council; and

(2) one-half of available funds shall be allocated based on need as demonstrated to the commissioner in consultation with the workforce development council.

(b) The formula for allocating substate grantee funds must utilize the most appropriate information available to the commissioner to distribute funds in order to address the state's worker adjustment assistance needs. Information for the formula allocation may include, but is not limited to:

- (1) insured unemployment data;
- (2) dislocated worker special assessment receipts data;
- (3) small plant closing data;
- (4) declining industries data;
- (5) farmer-rancher economic hardship data; and
- (6) long-term unemployment data.

(c) The commissioner shall establish a uniform procedure for reallocating substate grantee funds. The criteria for reallocating funds from substate grantees not expending their allocations consistent with their worker adjustment services plans to other substate grantees shall be developed by the commissioner in consultation with the workforce development council.

**History:** 1995 c 131 s 2; 1Sp1995 c 3 art 4 s 30

## **268.9782 DISLOCATION EVENT SERVICES GRANTS.**

*[For text of subd 1, see M.S.1994]*

**Subd. 2. Grantees.** (a) Entities authorized to submit dislocation event services grants include substate grantees and other eligible organizations. Nonsubstate grantees shall demonstrate they meet criteria established by the commissioner, in consultation with the workforce development council. The criteria include, but are not limited to:

- (1) the capacity to deliver worker adjustment services;
- (2) an ability to coordinate its activities with substate grantees in whose geographic area the organization will be operating;
- (3) the capability to coordinate delivery of worker adjustment services with other appropriate programs and agencies, including educational institutions, employment service, human service agencies, and economic development agencies; and
- (4) sufficient administrative controls to ensure fiscal accountability.

(b) For purposes of this section, the state job service may apply directly to the commissioner for a dislocation event services grant only if the effect of a plant closing or substantial layoff is statewide or results in the termination from employment of employees of the state of Minnesota.

*[For text of subd 3, see M.S.1994]*

(a) Coordinate the development, implementation, and evaluation of the statewide education and employment transitions system under section 126B.01. Beginning January 1, 1997, the council shall also coordinate the development, implementation, and evaluation of the Minnesota youth services programs under sections 121.704 to 121.709, and the National and Community Services Act of 1993, United States Code, title 42, section 12501, et seq.

(b) Review the provision of services and the use of funds and resources under applicable federal human resource programs and advise the governor on methods of coordinating the provision of services and the use of funds and resources consistent with the laws and regulations governing the programs. For purposes of this section, applicable federal and state human resource programs mean the:

- (1) Job Training Partnership Act, United States Code, title 29, section 1501, et seq.;
- (2) Carl D. Perkins Vocational and Applied Technology Education Act, United States Code, title 20, section 2301, et seq.;
- (3) National and Community Service Act of 1993, United States Code, title 42, section 12501, et seq.;
- (4) Adult Education Act, United States Code, title 20, section 1201, et seq.;
- (5) Wagner-Peyser Act, United States Code, title 29, section 49;
- (6) Social Security Act, title IV, part F, (JOBS), United States Code, title 42, section 681, et seq.;
- (7) Food Stamp Act of 1977, United States Code, title 7, section 6(d)(4), Food Stamp Employment and Training Program, United States Code, title 7, section 2015(d)(4);
- (8) programs defined in section 268.0111, subdivisions 4 and 5; and
- (9) School to Work Opportunity Act of 1994, Public Law Number 103-239.

Additional federal and state programs and resources can be included within the scope of the council's duties if recommended by the governor after consultation with the council.

(c) Review federal, state, and local education, post-secondary, job skills training, and youth employment programs, and make recommendations to the governor and the legislature for establishing an integrated seamless system for providing education, service-learning, and work skills development services to learners and workers of all ages.

(d) Advise the governor on the development and implementation of statewide and local performance standards and measures relating to applicable federal human resource programs and the coordination of performance standards and measures among programs.

(e) Administer grants to local education and employment transition partnerships, including implementation grants under section 126B.01, grants for youth apprenticeship programs under section 126B.03, and youth employer grants. Beginning January 1, 1997, administer youthworks grants under sections 121.704 to 121.709; and

(1) coordinate implementation of the education and employment transitions system under section 126B.01;

(2) promote education and employment transitions programs and knowledge and skills of entrepreneurship among employers, workers, youth, and educators, and encourage employers to provide meaningful work-based learning opportunities;

(3) evaluate and identify exemplary education and employment transitions programs and provide technical assistance to local partnerships to replicate the programs throughout the state;

(4) establish a performance-based quality assurance system for consistent statewide evaluation of the performance of the education and employment transitions system at both the state and local level;

(5) conduct an annual review of each local education and employment transitions partnership to ensure it adequately meets the quality assurance standards established as part of the state quality assurance system;

(6) develop the methods to assess local partnership effectiveness;

(7) annually publish a report on the findings of the evaluations of each local education transitions partnership;



(8) promote knowledge and skills of entrepreneurship among students in kindergarten through grade 12 by sharing information about the ways new business development contributes to a strong economy.

(f) Advise the governor on methods to evaluate applicable federal human resource programs.

(g) Sponsor appropriate studies to identify human investment needs in Minnesota and recommend to the governor goals and methods for meeting those needs.

(h) Recommend to the governor goals and methods for the development and coordination of a human resource system in Minnesota.

(i) Examine federal and state laws, rules, and regulations to assess whether they present barriers to achieving the development of a coordinated human resource system.

(j) Recommend to the governor and to the federal government changes in state or federal laws, rules, or regulations concerning employment and training programs that present barriers to achieving the development of a coordinated human resource system.

(k) Recommend to the governor and to the federal government waivers of laws and regulations to promote coordinated service delivery.

(l) Sponsor appropriate studies and prepare and recommend to the governor a strategic plan which details methods for meeting Minnesota's human investment needs and for developing and coordinating a state human resource system.

**Subd. 4. Subcommittees.** The governor's workforce development council shall appoint an advisory subcommittee the majority of whose members shall represent business and industry to advise the council on the establishment of the statewide education and employment transitions system. The chair of the workforce development council may establish subcommittees in order to carry out the duties and responsibilities of the council.

**Subd. 5. Staffing.** The department of economic security must provide staff support to the Minnesota workforce development council. The department of economic security and the department of children, families, and learning shall jointly staff the education and employment transitions subcommittee and its activity with the full council. The support includes professional, technical, and clerical staff necessary to perform the duties assigned to the workforce development council. The council may ask for assistance from other units of state government as it requires in order to fulfill its duties and responsibilities.

**Subd. 6. Expiration.** The council expires immediately if it is no longer required by federal law as a condition of receiving federal funding, or if there is no federal funding for the human resource programs within the scope of the council's duties.

**History:** 1995 c 131 s 1; 1Sp1995 c 3 art 16 s 13

## 268.92 LEAD ABATEMENT PROGRAM.

**Subdivision 1. Definitions.** (a) For the purposes of this section, the words defined in section 144.9501 have the meanings given.

(b) For purposes of this section, "eligible organization" means a lead contractor, city, board of health, community health department, community action agency as defined in section 268.52, or community development corporation.

(c) For purposes of this section, "commissioner" means the commissioner of economic security, or commissioner of the Minnesota housing finance agency as authorized by section 462A.05, subdivision 15c.

**Subd. 2. Grants; administration.** Within the limits of the available appropriation, the commissioner shall develop a swab team services program which may make demonstration and training grants to eligible organizations to train workers to provide swab team services and swab team services for residential property. Grants may be awarded to nonprofit organizations to provide technical assistance and training to ensure quality and consistency within the statewide program. Grants shall be awarded to help ensure full-time employment to workers providing swab team services and shall be awarded for a two-year period.

Grants awarded under this section must be made in consultation with the commissioners of the department of health and the housing finance agency, and representatives of neighborhood groups from areas at high risk for toxic lead exposure, a labor organization, the lead

missioner shall ensure that money appropriated to implement this section is distributed as soon as practicable. The commissioner may make grants directly to eligible recipients.

*[For text of subs 3 to 9, see M.S.1994]*

Subd. 10. [Deleted, 1995 c 233 art 2 s 56]

*[For text of subs 11 and 12, see M.S.1994]*

**History:** 1995 c 14 s 1

#### **268.561 MINNESOTA YOUTH PROGRAM.**

Subdivision 1. **Purpose.** The Minnesota youth program is established to:

- (1) improve the employability of eligible applicants through exposure to public or private sector work;
- (2) enhance the basic educational skills of eligible applicants;
- (3) encourage the completion of high school or equivalency;
- (4) assist eligible applicants to enter employment, school-to-work transition programs, the military, or post-secondary education or training;
- (5) enhance the citizenship skills of eligible applicants through community service and service-learning; and
- (6) provide educational, career, and life skills counseling.

*[For text of subs 2 to 10, see M.S.1994]*

**History:** 1Sp1995 c 3 art 4 s 30

#### **268.65 APPROVED TRAINING.**

*[For text of subd 1, see M.S.1994]*

Subd. 2. **Approval of training.** An individual's enrollment in a training course must be approved for the purposes of this subdivision if the commissioner finds that:

- (1) the individual is not unemployed due to the seasonal nature of the work or a temporary work shortage;
- (2) the individual's separation or notice of layoff from most recent employment was caused by job obsolescence, plant shutdown, regional decline in the individual's customary occupation, or industry slowdown, and the individual is unlikely to return to work for that employer or in that occupation within 12 months following separation from employment;
- (3) reasonable and suitable work opportunities for which the individual is fitted by training, experience, and physical capabilities do not exist within the local labor market;
- (4) the training course is designed to provide preparation for available employment within the local labor market or in an area to which the individual is willing to relocate;
- (5) the training is conducted by an agency, educational institution, or employing unit that is approved by the commissioner of children, families, and learning or state board for vocational technical education or higher education services office to conduct training programs; except that an agency, educational institution, or employing unit that is not subject to regulation and approval by one of the agencies in this clause may be approved by the commissioner if it is determined that the institution's curriculum, facilities, staff, and other essentials are adequate to achieve the training objective; and
- (6) the training consists of a full course load, as defined by the training provider, necessary to achieve the approved training objective, and the individual is making satisfactory progress in the course. The department may require the training provider to periodically certify to the individual's attendance and progress.

*[For text of subs 3 to 5, see M.S.1994]*

**History:** 1995 c 212 art 3 s 59; 1Sp1995 c 3 art 16 s 13

**268.665 WORKFORCE DEVELOPMENT COUNCIL.**

**Subdivision 1. Creation.** The governor's workforce development council is created under the authority of the Job Training Partnership Act, United States Code, title 29, section 1501, et seq. Local workforce development councils are authorized under the Job Training Partnership Act, United States Code, title 29, section 1501 and the one stop career center system.

**Subd. 2. Membership.** The governor's workforce development council is composed of 32 members appointed by the governor. The members may be removed pursuant to section 15.059. In selecting the representatives of the council, the governor shall ensure that 50 percent of the members come from nominations provided by local workforce councils. Local education representatives shall come from nominations provided by local education to employment partnerships. The 32 members shall represent the following sectors:

(a) State agencies: the following individuals shall serve on the council:

- (1) commissioner of the Minnesota department of economic security;
- (2) commissioner of the Minnesota department of children, families, and learning;
- (3) commissioner of the Minnesota department of human services; and
- (4) commissioner of the Minnesota department of trade and economic development.

(b) Business and industry: six individuals shall represent the business and industry sectors of Minnesota.

(c) Organized labor: six individuals shall represent labor organizations of Minnesota.

(d) Community-based organizations: four individuals shall represent community-based organizations of Minnesota. Community-based organizations are defined by the Job Training Partnership Act as private nonprofit organizations that are representative of communities or significant segments of communities and that provide job training services, agencies serving youth, agencies serving individuals with disabilities, agencies serving displaced homemakers, union-related organizations, and employer-related nonprofit organizations and organizations serving nonreservation Indians and tribal governments.

(e) Education: five individuals shall represent the education sector of Minnesota as follows:

- (1) one individual shall represent local public secondary education;
- (2) one individual shall have expertise in design and implementation of school-based service-learning;
- (3) one individual shall represent post-secondary education;
- (4) one individual shall represent secondary/post-secondary vocational institutions;

and

(5) the chancellor of the higher education board.

(f) Other: two individuals shall represent other constituencies including:

- (1) units of local government; and
- (2) applicable state or local programs.

The speaker and the minority leader of the house of representatives shall each appoint a representative to serve as an ex officio member of the council. The majority and minority leaders of the senate shall each appoint a senator to serve as an ex officio member of the council. After January 1, 1997, the Minnesota director of the corporation for national service shall also serve as an ex officio member.

(g) Appointment: each member shall be appointed for a term of three years from the first day of January or July immediately following their appointment. Elected officials shall forfeit their appointment if they cease to serve in elected office.

(h) Members of the council are compensated as provided in section 15.059, subdivision 3.

**Subd. 3. Purpose; duties.** The governor's workforce development council shall replace the governor's job training council and assume all of its requirements, duties, and responsibilities, under the Job Training Partnership Act, United States Code, title 29, section 1501, et seq. Additionally, the workforce development council shall assume the following duties and responsibilities:

**Subd. 4. Funding.** The commissioner, in consultation with the workforce development council, may establish an emergency funding process for dislocation event services grants. No more than 20 percent of the estimated budget of the proposed grant may be awarded through this procedure. The grantee shall submit a formal dislocation event services grant application within 90 days of the initial award of emergency funding.

**History:** 1995 c 131 s 2; 1Sp1995 c 3 art 4 s 30

### 268.9783 RETRAINING AND TARGETED TRAINING GRANTS.

*[For text of subds 1 to 5, see M.S.1994]*

**Subd. 6. Funding.** The commissioner may award retraining and targeted training grants, if approved by the workforce development council, through a request for proposal process if:

(1) employers benefiting from a retraining and targeted training grant provide a match of at least one for one that may be in the form of funding, equipment, staff, instructors, and work release time for workers enrolled in training;

(2) employers benefiting from a retraining and targeted training grant to retrain workers at risk of dislocation maintain their past rate of expenditure from other sources for that training during the grant period; and

(3) employers benefiting from a retraining and targeted training grant to train new workers do not have workers in layoff status, unless it can be documented the layoff is temporary or seasonal.

*[For text of subds 7 and 8, see M.S.1994]*

**History:** 1995 c 131 s 2; 1Sp1995 c 3 art 4 s 30

### 268.98 PERFORMANCE STANDARDS, REPORTING, COST LIMITATIONS.

*[For text of subd 1, see M.S.1994]*

**Subd. 2. Reports.** (a) Grantees receiving funds under sections 268.9771, 268.978, 268.9781, and 268.9782 shall report to the commissioner information on program participants, activities funded, and utilization of funds in a form and manner prescribed by the commissioner.

(b) The commissioner shall report quarterly to the workforce development council information on prefeasibility study grants awarded, rapid response and expeditious response activities, worker adjustment services plans, and dislocation event services grants. Specific information to be reported shall be by agreement between the commissioner and the workforce development council.

(c) The commissioner shall provide an annual report to the governor, legislature, and the workforce development council on the administration of the programs funded under sections 268.9771, 268.978, 268.9781, and 268.9782.

**Subd. 3. Cost limitations.** (a) For purposes of sections 268.9781 and 268.9782, funds allocated to a grantee are subject to the following limitations:

(1) a maximum of 15 percent for administration in a worker adjustment services plan and ten percent in a dislocation event services grant;

(2) a minimum of 50 percent for provision of training assistance;

(3) a minimum of ten percent and maximum of 30 percent for provision of support services; and

(4) the balance used for provision of basic readjustment assistance.

(b) A waiver of the cost limitation on providing training assistance may be requested. The waiver may not permit less than 30 percent of the funds be spent on training assistance.

(c) The commissioner shall prescribe the form and manner for submission of an application for a waiver under paragraph (b). Criteria for granting a waiver shall be established by the commissioner in consultation with the workforce development council.

**History:** 1995 c 131 s 2; 1Sp1995 c 3 art 4 s 30