

House Research Act Summary

CHAPTER: 112

SESSION: 2005 Regular Session

TOPIC: Unemployment insurance

Date: May 24, 2005

Analyst: Elisabeth A. Long, 651-296-5052

This publication can be made available in alternative formats upon request. Please call 651-296-6753 (voice); or the Minnesota State Relay Service at 1-800-627-3529 (TTY) for assistance. Summaries are also available on our website at: www.house.mn/hrd.

Error! Bookmark not defined.

Article 1: Federal conformity provisions

Overview

Article 1 makes changes in the Minnesota unemployment insurance law for the purpose of curbing state unemployment tax act (“SUTA”) avoidance. These changes make Minnesota law consistent with the requirements of the newly enacted federal SUTA Dumping Prevention Act of 2004, P.L. 108-295.

Like other states, Minnesota distributes the costs of unemployment insurance among employers by taxing each employer in accord with an unemployment experience rating, which reflects the number of an employer’s former employees who have received unemployment benefits. Employers and financial advisors engage in “SUTA dumping” when they use mergers, acquisitions, or restructuring schemes to lower their unemployment experience ratings or to avoid being taxed at the new employer rate. SUTA dumping compromises the experience-rating system by shifting the cost of one employer’s unemployment experience to other employers.

The federal SUTA Dumping Prevention Act requires states to (1) require the transfer of unemployment experience when a predecessor employer and a successor employer are under substantially common ownership, management, or control at the time the predecessor transfers its business to the successor; and (2) prohibit the transfer of unemployment experience when a person who is not already an employer becomes an employer by acquiring a business for the sole or

primary purpose of obtaining a lower rate. Because Minnesota already requires commonality of ownership as a condition for the transfer of unemployment experience, it is not possible for the second scenario to occur in Minnesota and there is no need to adopt an express prohibition of such transfers. However, to comply with federal law, this act requires the transfer of unemployment experience not only in situations of substantially common ownership, but also in situations of substantially common management or control.

Section

- 1 **Single member limited liability companies.** Requires a corporation to report workers on a wage detail report if the corporation is the only member of a limited liability company that is disregarded for federal income tax purposes, subject to notification and misreporting penalties (see § 12). Effective January 1, 2006.
- 2 **Wage detail report.** Amends § 268.044 to cross-reference the provision on treatment of employee leasing companies.
- 3 **Missing or erroneous information.** Imposes an administrative service fee equal to two percent of the gross wages of each employee omitted from a wage detail report. Provides that the commissioner may cancel administrative fees and penalties if the commissioner determines that the error or omission occurred because of employer ignorance or inadvertence.
- 4 **Account for each employer.** Amends § 268.045, subd. 1 to cross-reference the provision on employee leasing companies. Makes technical changes.
- 5 **Employee leasing companies, professional employer organizations, or similar person.**

Subd. 1. Tax accounts assigned. Requires this kind of business to keep a separate tax account for the employees of each business to whom the company leases employees and to pay the tax on those employees. Requires the company that uses leased employees to pay directly the tax on any of its employees that are not leased.

Subd. 2. Nonprofit and government accounts assigned. Sets up a parallel system for non-profit and government employers that use leased employees.

Subd. 3. Penalties; application. Cross-references the penalty provisions in current law that apply to violations of this section. Requires that penalty payments be credited to the administration account to insure integrity in the unemployment insurance program. Specifies that the provision on experience rating history transfer does not apply to employee leasing contracts.

Effective for contracts entered on and after January 1, 2006.

- 6 **Payments.** Clarifies that an employer's assigned tax rate is governed by § 268.051, subd. 6 (see § 9).
- 7 **Experience rating history transfer.** Amends current law requiring transfer of experience rating history to conform with new federal requirements. Provides that the experience rating of a taxpaying employer will be transferred to a taxpaying employer who acquires all or part of the organization, trade or business, or workforce of a predecessor employer if the predecessor and successor share at least 25 percent common ownership *or* substantially common management or control. (Present law does not require the transfer of experience when there is substantially common management or control.) Eliminates language that makes the transfer of experience dependent upon the successor employer filing an

application.

- If a distinct severable portion of the organization, trade or business, or workforce is acquired, then the successor employer acquires the experience rating history attributable to the portion it acquired and the predecessor employer retains the experience rating history of the remaining portion.
- If there is a partial acquisition and the commissioner cannot identify a distinct severable portion, the commissioner of employment and economic development (“commissioner”) will apportion the experience rating history in accord with the percentage of employment positions obtained by the successor and retained by the predecessor. This is consistent with current law.
- Successor employers must notify the commissioner of acquisitions described above, subject to notification and misreporting penalties (§ 12), if the successor’s experience rating was lower than the predecessor’s experience rating at the time of acquisition.
- The commissioner will determine whether an employer is a successor employer, recompute the tax rate accordingly, and notify all affected employers.
- Experience rating history shall be transferred as of the date of acquisition.
- Defines “acquisition” and “distinct severable portion.”
- Provides for the combination of experience rating histories and recomputation of tax rate when one publicly held corporation acquires another publicly held corporation and when two publicly held corporations merge.

This section does not apply to contracts covered by employer tax or reimbursable accounts.

8 Actions that avoid taxes. Grants the commissioner new authority, upon determining that an action was taken for the purpose of avoiding an experience rating history, the transfer of an experience rating history, or the assignment of a new employer tax rate, to: (1) transfer experience rating history and recompute an employer’s tax rate, or (2) assign a new employer tax rate. Permits the commissioner to make this determination regardless of whether there is any commonality of ownership, management, or control.

9 Notice of tax rate. Establishes an exception to the commissioner’s obligation to notify each employer of its tax rate for the following year by December 15 in cases where tax rates are recomputed under the circumstances described in §§ 7 and 8. Provides that a recomputed tax rate applies for the quarter including the date of acquisition and any quarter thereafter during the calendar year of the acquisition.

10 Employee leasing company, professional employer organization, or similar person. Specifies that if at least half of a person’s workforce consists of members originally recruited and hired by employee leasing firms and then provided to the person for a fee, the person is jointly and severally liable for unpaid amounts due under the unemployment law or due to the workforce development fund on the wages paid on the contract with the employee leasing firm. Exempts from this subdivision companies that obtain an exemption from registration for workers compensation insurance purposes, pursuant to § 79.255, subd. 9.

- 11 Administrative penalties.** Provides that an employer who reports an employee on a wage detail report knowing that the employee is actually employed by a different employer is subject to existing administrative penalties. (Current law provides for penalties of either \$500 or 50 percent of the reduced unemployment benefits or payments required, whichever is higher.)
- 12 Notification and misreporting penalties.** Establishes new penalties governing situations where the commissioner finds: (1) an employer or employee, officer, or agent of an employer failed to disclose or attempted to hide an acquisition in violation of notification requirements (§ 7); (2) an individual advised or assisted an employer in avoiding compliance with notification requirements; or (3) a person, or his employee, officer, or agent, violated the reporting requirements for leased workers (§ 5) or single member limited liability companies (§ 1). Assesses violators either \$5,000 or two percent of the quarterly payroll acquired or not reported, whichever is higher. Gives violator 30 calendar days after the notice of assessment is sent to pay the penalty or to file an appeal.
- 13 Criminal penalties.** Provides that criminal penalties shall apply to a person who, for the purpose of reducing required unemployment insurance payments or the payment of benefits, either fails to comply with the notification requirements described in § 7 or advises or assists an employer to knowingly make a false statement or to not comply with notification requirements. Effective August 1, 2005 (applies to crimes committed on or after that date).
- 14 Mandatory federal implementation.** Requires the commissioner to implement systems and processes to detect, investigate, and enforce the provisions of §§ 6 and 7.
- 15 Relation to federal law.** Requires Article 1 to be construed, interpreted, and applied consistent with the Federal SUTA Dumping Prevention Act of 2004
- 16 Repealer.** Repeals Minnesota Rules 3315.1020 (consolidated reports of employing units having common ownership), 3315.3210 (definitions), and 3315.3220 (acquisitions). Repeals Minnesota Statutes, § 268.045, subs. 2, 3, and 4 (permitting the establishment of common paymaster tax accounts, the merger of experience ratings, and group reimbursable accounts).
- 17 Effective date.** With the exception of sections including a separate effective date, this article is effective July 1, 2005.

Article 2: Unemployment Insurance Housekeeping

Overview

Article 2 makes technical and housekeeping changes to Minnesota's unemployment insurance law.

Section

- 1 Statement.** Makes a technical change.
- 2 Construction/independent contractor.** Modifies conditions for designation as “independent contractor” to conform with the workers compensation law.
- 3 Employee.** Clarifies definition of “employee” so that it includes any individual employed to perform or help perform the work of an employer’s agent or employee if the employer had actual or constructive knowledge of the work.
- 4 Employer.** Simplifies the definition of “employer” in accord with the modified definition of “person” (§ 0).

- 5 **Noncovered Employment.** Revises the definition of “noncovered employment” to clarify that employment as an insurance salesperson or real estate salesperson is not covered if all the wages from the employment are solely by way of commission, even if the salesperson receives other forms of compensation that are not by way of commission.
- 6 **Person.** Makes the definition of “person” more precise by listing the various entities considered a person under the unemployment insurance law. See the revised definition of “employer” (§ 0).
- 7 **Unemployed.** Clarifies that a person is considered “unemployed” in a given week if (1) the person worked less than 32 hours in a week; and (2) the person’s weekly earnings are less than the person’s weekly benefits.
- 8 **Employer registration.** Makes a technical change. Amends provision to specify that the commissioner will no longer require a wage detail report from a business as soon as the commissioner receives notice of the termination of the business.
- 9 **Determinations of coverage.** Makes technical changes.
- 10 **Failure to timely file report; late fees.** Amends law to allow two waivers during each 12 months, rather than just one waiver, of a late fee assessed an employer for failure to timely submit a wage detail report. Raises minimum amount of late fee assessed from \$50 to \$250.
- 11 **Tax rate buydown.** Limits buydown option to taxpaying employers who have no amounts past due under Chapter 268 of the Minnesota Statutes (the unemployment law).
- 12 **Election by state or political subdivision to be a taxpaying employer.** Strikes language excluding school districts from the provision allowing a state or political subdivision to elect to be a taxpaying employer.
- 13 **Election.** Provides that voluntary payments exceeding benefits paid during the experience rating period cannot be credited against benefits paid after the experience rating period.
- 14 **Credit adjustments, refunds.** Re-states the deadline for seeking a credit adjustment: from four years after the year the payment was made to four years after the date the payment was due.
- 15 **Requirements.** Clarifies the five requirements for receipt of unemployment benefits by elaborating upon references to other sections of Chapter 268.
- 16 **Limitations.** Strikes language about benefits being available only for weeks during the applicant’s benefit year and adds similar language to a different section (§ 0). Makes a technical change.
- 17 **Eligibility conditions.** Incorporates language similar to that stricken from § 0. Amends eligibility requirements to specify that, to be eligible, an applicant must be unemployed, as defined in § 0.
- 18 **Not eligible.** Amends current law to provide that an applicant engaged in 32 hours or more of volunteer work is not eligible to receive benefits for that week.
- 19 **Payments that delay unemployment benefits.** Specifies that vacation pay paid upon temporary, indefinite, or seasonal separation from employment makes an applicant ineligible for benefits, but vacation pay paid upon permanent separation from employment does not. Strikes existing language about determining weeks of payments that delay benefits and adds new language to clarify that § 0 applies to all weeks of payment, as defined, and to the period immediately following the last day of employment. Provides for calculation of number of weeks of payment.
- 20 **Deductible earnings.** Provides that earnings shall not be deducted from an applicant’s weekly unemployment benefit amount if they are from (1) on-call or standby pay for volunteer firefighter or volunteer ambulance service personnel, or (2) pay as an election judge. Current law provides that earnings from service as a volunteer firefighter, as volunteer ambulance service personnel, and from jury duty shall not be deducted.
- 21 **Aliens.** Modifies language to reflect new federal agency name.

22 **Continued biweekly request for benefits.** Amends requirement that biweekly request for
unemployment benefits include information on possible issues of disqualification to add
23 requirement that biweekly request also include information on possible issues of eligibility.
Methods for filing continued biweekly requests for unemployment benefits. Eliminates
the telephone as an available method for filing a continued biweekly request.
24 **Quit.** Clarifies that current law disqualifying from unemployment benefits applicants who
quit employment (§ 268.095, subd. 1) must be analyzed in accord with current law dictating
the duration of disqualification (§ 268.095, subd. 10).
25 **Discharge.** Clarifies that current law disqualifying from unemployment benefits applicants
who were discharged from employment by an employer (§ 268.095, subd. 4) must be
analyzed in accord with current law dictating the duration of disqualification (§ 268.095,
subd. 10). Makes a technical change.
26 **Acts or omissions after separation.** Strikes the reference to § 268.095, subd. 8 (offers of
employment).
27 **Offers of suitable employment.** Amends the subdivision title to specify that offers must be
for “suitable” employment. Strikes current language “disqualifying” individuals who fail to
seek or accept offers of suitable employment from unemployment benefits, and instead
makes them “ineligible” for the receipt of benefits. Adds language stricken from other
subdivisions of § 268.085 (see §§ 0 and 0).
28 **Disqualification duration.** Strikes language about when the period of disqualification
from unemployment benefits begins, which is incorporated in § 0.
29 **Application.** Strikes language about offers of suitable employment, which is incorporated
in § 27.
30 **Notification.** Amends the notification requirements to require an applicant to report (1) any
offer of employment refused during the eight calendar weeks prior to the date of the
applicant’s application for unemployment benefits, and (2) the name of the employer
making the offer. Subjects persons who fail to disclose an offer of employment to the
penalties for false disclosures and concealment of facts set forth in § 268.182, subd. 2.
31 **Disqualification determination.** Deletes language referring to offers of employment.
32 **Direct hearing.** Eliminates a reference to “senior unemployment review judge” in
conjunction with the change made in § 0.
33 **Applicant’s appeal by mail.** Amends subdivision heading and language to clarify that it
addresses appeals filed by *an applicant*.
34 **Appeals.** Eliminates provisions allowing applicants to seek de novo review of an
unemployment law judge’s decision before a senior unemployment law judge.

- Under current law, applicants and employers would still be able to appeal initial eligibility determinations before an unemployment law judge, and to seek judicial review of the unemployment law judge’s decision before the Minnesota Court of Appeals.
- Creates a new mechanism for review that would allow parties to file a motion for reconsideration of an unemployment law judge’s decision with the unemployment law judge before they seek judicial review in the Minnesota courts.
- Strikes all languages referring to review by senior unemployment review judges.

This section applies to unemployment law judge decisions issued on or after 30 days

following the date of final enactment.

35 Notification. Strikes obsolete statutory reference.

36 Nonfraud overpayment. Specifies that benefits paid for weeks more than 3 years prior to a determination of overpayment shall not be considered overpaid. (Current law refers to the “discovery” of overpayment, not a “determination” of overpayment.)

37 Overpayment due to fraud. Clarifies language stating that benefits paid for weeks more than four years prior to a determination of overpayment due to fraud shall not be considered overpaid.

38 Interest. Amends the law to specify that interest payments on benefits fraudulently attained and penalty amounts assessed for overpayment due to fraud shall be credited to the administration account.

39 Administrative penalties. Increases the administrative penalty of benefit ineligibility from a range of 1 to 52 weeks to a range of 13 to 104 weeks.

40 Tax rate computation. Provides that the commissioner may compute to the nearest one-hundredth of a percent any unemployment tax rate assigned on or after July 1, 2005, regardless of the year for which the tax rate is applicable.

41 Revisor’s Instructions. Instructs the Revisor to:

- Change the name of the Department of Economic Security to the Department of Employment and Economic Development throughout the Minnesota Statutes and Minnesota Rules.
- Change the headnotes for § 268.095 and § 268.101.
- Renumber § 268.095, subd. 8, as § 268.085, subd. 13c; correct cross-references.
- Change the term “court order” to “district court order” wherever the term appears in §§ 268.01 to 268.83.

42 Repealer. Repeals Minnesota Rules, parts 3310.2926 (requirements for decisions after hearing on appeal); 3310.5000 (representation before a referee, appeal tribunals, and the commissioner); 3315.0910, subpart 9 (rules about domestic service); 3315.1301, subparts 1 (when an experience rating account first becomes chargeable with benefits), 2 (effect of unpaid taxes on experience rates), and 3 (effect of partial payment of taxes on experience rates); 3315.1650 (taxes and taxpaying accounts); 3315.2210 (interest and collection of taxes from employers). Repeals § 268.086, subd. 4 (bi-weekly requests for unemployment benefits by telephone), and Laws 1997, ch. 66, § 64, subd. 1 (wage detail report filing requirements).

43 Effective Date. With the exceptions noted, this article is effective July 1, 2005. Section 40 is effective the day following final enactment. Section 33 applies to unemployment law judge decisions issued on or after 30 days following final enactment.