

House Research Act Summary

CHAPTER: 128

SESSION: 2007 Regular Session

TOPIC: Unemployment Insurance Advisory Council Bill

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Article 1: Policy Changes Effective September 30, 2007, and Thereafter

Overview

Article 1 makes a variety of policy changes to the unemployment law that, for the most part, will not become effective until at least September 30, 2007. This article, among other things, does the following:

- ▶ establishes an automatic alternative base period for applicants who do not have sufficient wages during the regular base period (§ 0);
- ▶ reduces the percentage of the state's average weekly wage used to calculate maximum weekly benefit amounts and caps on the minimum weekly benefit amount (§§ 0, 21);
- ▶ makes various changes intended to help deter and detect fraud and nonfraud overpayments of unemployment benefits (§§ 13, 18 to 20);
- ▶ eliminates the protest affirmation and redetermination process currently used to contest unemployment tax determinations (§§ 2, 3, 5, 7 to 11, 22).

Section

- 1** **Base period.** An employee's *base period* is the span of time that the unemployment insurance system considers to determine whether the employee is eligible for benefits and, if eligible, the amount of benefits she should receive. The base period is generally the *first four of the last five completed calendar quarters* before the employee applies for benefits.

This bill would establish an *alternative base period* for applicants who do not have sufficient wages during the usual base period to qualify for benefits. The alternative base period would take into account an applicant's wages during the last four completed calendar quarters before applying for benefits. The alternative base period would apply to applications filed on or after September 30, 2007, but only if they are filed 30 days or more after the end of the last completed quarter (when a wage detail report will be on file).

The bill also changes the term "benefit account" to "application for unemployment benefits," effective on or after September 30, 2007.

- 2** **Filing; filed.** Eliminates references to the protest affirmation and redetermination process abolished in section 0.
- 3** **Determinations of coverage.** Abolishes the protest affirmation and redetermination process that employers currently use to challenge most tax determinations, meaning that employers would be able to directly appeal all tax determinations.

Shortens from 30 days to 20 days the appeal period for employers challenging a determination by the commissioner of employment and economic development ("commissioner") that an employer is covered by the unemployment system, with respect to coverage determinations issued on or after September 30, 2007.

- 4** **Exceptions for all employers (noncharge provisions).** Adds a new noncharge provision for employers in the tourist or recreation industry who actively operate a business for less than 15 weeks per year. These employers would not be "charged" for an applicant's wage credits if the applicant's wage credits amount to less than 600 times the minimum wage.

(Unemployment benefits paid to an employee are generally "charged" to the taxpaying or

reimbursable account of the employee's base period employer or employers as they are paid, affecting the experience rating and tax rate of taxpaying employers and requiring reimbursing employers to directly reimburse the unemployment system for the benefits paid.) This section applies to benefits paid on benefit accounts filed effective September 30, 2007.

- 5 **Notice of unemployment benefits paid.** Eliminates references to the protest affirmation and redetermination process abolished in section 0.
- 6 **Payments.** Requires all employers to pay unemployment taxes quarterly, effective January 1, 2008. Under current law, some small employers are permitted to pay unemployment taxes on an annual basis.
- 7 **Tax rate for new employers.** Eliminates references to the protest affirmation and redetermination process abolished in section 0.
- 8 **Notice of tax rate.** Eliminates references to the protest affirmation and redetermination process abolished in section 0. Shortens from 30 days to 20 days the period of time that employers have to challenge their tax rate, with respect to determinations issued on or after September 30, 2007.
- 9 **Determination and appeal.** Eliminates references to the protest affirmation and redetermination process abolished in section 0. Shortens from 30 days to 20 days the period of time that nonprofit organizations have to challenge a determination of their status as employers, with respect to determinations issued on or after September 30, 2007.
- 10 **Credit adjustments, refunds.** Eliminates references to the protest affirmation and redetermination process abolished in section 0. Shortens from 30 days to 20 days the period of time that employers have to challenge denials of credit adjustments or refunds, with respect to denials issued on or after September 30, 2007.
- 11 **Personal liability.** Eliminates references to the protest affirmation and redetermination process abolished in section 0. Shortens from 30 days to 20 days the period of time that individuals have to challenge determinations of personal liability, with respect to determinations issued on or after September 30, 2007.
- 12 **Benefit account requirements and weekly unemployment benefit amount and maximum amount of unemployment benefits.** Under current law, the weekly benefit amount paid to an applicant is the higher of two possible amounts: (1) one-half the employee's average weekly wage during the entire base period, capped at two-thirds of the state's average weekly wage; or (2) one-half of the employee's average weekly wage during the high quarter only, capped at 45 percent of the state's average weekly wage. This bill lowers the cap on the second amount from 45 percent to 43 percent of the state's average weekly wage. Makes a conforming change involving state average weekly wage consistent with Article 2, section 1, effective December 1, 2007.
- 13 **Not eligible.** Makes an applicant ineligible to receive unemployment benefits for any week that the applicant, at the beginning of the week, has an outstanding fraud overpayment balance (including penalties and interest). Currently, applicants without outstanding fraud overpayment balances are eligible for benefits, but there is a 100 percent offset of overpayment balances from any benefits received. The new ineligibility requirement would apply to all outstanding fraud overpayment balances as of September 30, 2007.
- 14 **Payments that delay unemployment benefits.** Modifies definition of payments that delay unemployment benefits to eliminate references to the Federal Insurance Contribution Act. Eliminates statutory provision providing that holiday pay delays an applicant's receipt of unemployment benefits, effective for all benefits paid on or after September 30, 2007.
- 15 **Social Security benefits.** Provides that if the effective date of an applicant's Social Security claim for old age benefits is, or will be, after the start of the base period, 50% of the weekly equivalent of the benefit must be deducted from the applicant's weekly unemployment

benefit amount. If the effective date of the applicant's Social Security claim for old age benefits is before the start of the base period, there is no deduction from the applicant's weekly unemployment benefit amount.

16 Quit. Creates a new exception to the general rule that applicants who quit employment are ineligible for unemployment benefits to allow benefits in certain situations where an applicant quits employment due to loss of child care. The exception would apply only in situations where an applicant has made reasonable efforts to obtain other child care and requested time off (or another accommodation) from the applicant's employer and no reasonable accommodation was available. To collect benefits, an applicant would have to demonstrate an ability to work (i.e., that the child care problem has been resolved). Also clarifies that applicants who quit work due to serious illness or injury also must demonstrate an ability to work before receiving benefits.

17 Employment misconduct defined. Conforming change, consistent with section 0.

18 Evidentiary hearing by an unemployment law judge. Gives an unemployment law judge discretion to dismiss an appeal if the appealing party does not personally participate in the hearing, unless the appealing party files a request for reconsideration and establishes good cause for failing to participate. Applies to evidentiary hearings on or after 30 days following the date of enactment.

19 Overpayment because of fraud. Increases the penalty assessed on applicants receiving overpayments due to fraud from 25 percent of the amount fraudulently obtained to 40 percent of the amount fraudulently obtained, effective September 30, 2007. Requires payments made toward a penalty to be credited as follows: 62.5 percent to the contingent account and 37.5 percent to the administration account for deterring, detecting, or collecting overpayments.

Shortens from 30 days to 20 days the period of time that applicants have to challenge determinations of overpayment by fraud, with respect to determinations issued on or after September 30, 2007.

20 Establishment (Unemployment Insurance Trust Fund). Provides that, *if* allowed by federal law, five percent of amounts recovered on overpaid unemployment benefits shall be credited to the administration account (see § 20). Under current law, all money recovered on overpaid benefits goes into the unemployment insurance trust fund.

21 Administration account. Consistent with section 19, requires five percent of any money recovered on any overpaid unemployment benefits to be deposited in the administration account for use in deterring, detecting, and collecting overpaid unemployment benefits.

22 Sunset; weekly unemployment benefits. Extends from September 1, 2006, until November 1, 2008, the sunset on a provision modifying the statutory cap on weekly benefit amounts calculated based on high quarter wages. Article 1, section 0, changes the statutory cap to 43 percent of the state's average weekly wage, and this provision requires that the cap be not less than \$350, even if 43 percent of the state's average weekly wage is less than \$350.

23 Repealer. Repeals a provision allowing some small employers to pay unemployment taxes annually, rather than quarterly (see § 0), effective January 1, 2008. Repeals statutory language specifying that wage credits from recreational or tourist industry employment cannot be considered when establishing a benefit account. Repeals language describing the protest affirmation and redetermination process abolished in section 0.

Article 2: Policy Changes Effective September 30, 2007, and Thereafter

Overview

Article 2 makes a variety of policy changes to the unemployment law that, for the most part, will not become effective until at least September 30, 2007. This article, among other things, does the following:

- ▶ modifies department procedures for overpayments of benefits (§§ 0, 0, 0, 0 to 0);
- ▶ reduces the appeals period for unemployment decisions and determinations (except for appeals to the Court of Appeals) from 30 days to 20 days (§§ 0, 0, 0, 0, 0 to 0, 0);
- ▶ adjusts provisions regulating the deductibility of earnings from benefits (§ 0);
- ▶ makes compensation for National Guard and military employment nondeductible from unemployment benefits (effective the Sunday following final enactment) (§ 0);
- ▶ clarifies the circumstances under which the commissioner will pay unemployment benefits that are based upon wages earned in another state (§ **Error! Unknown switch argument.**); and
- ▶ requires all employers of 50 or more employees to pay unemployment taxes electronically beginning January 1, 2008 (§ 0).

- 1 **State's average annual and average weekly wage.** Provides that the state's calculation of average weekly wage, used to calculate the state's maximum weekly benefit amount, applies to the one-year period beginning the last Sunday in October (rather than the first Sunday in August, as under current law) during the calendar year of the calculation. Makes this section effective December 1, 2007. (See Art. 1, § 0).
- 2 **Electronic payment required.** Broadens the group of employers required to submit unemployment payments electronically to require all employers of at least 50 employees to make payments electronically. (Current law requires only employers of at least 500 employees to make payments electronically.) Makes this section effective January 1, 2008.
- 3 **Notice and right to hearing.** Shortens from 30 days to 20 days the appeal period for business licensees challenging the commissioner's notice of an action to revoke a business license for failure to pay amounts due under the unemployment insurance law, with respect to notices sent on or after September 30, 2007.
- 4 **Determination of liability.** Shortens from 30 days to 20 days the appeal period for contractors and employee leasing firms to appeal the commissioner's determination of liability for failure to comply with unemployment insurance law, with respect to determinations issued on or after September 30, 2007.
- 5 **Application for unemployment benefits; determination of benefit account.** Requires any determination or amended determination of overpayment of benefits to state the amount of the overpayment and the statutory requirements for repaying the overpayment. Applies to all determinations issued on or after September 30, 2007.
- 6 **Right of appeal.** Shortens from 30 days to 20 days the appeal period for applicants and employers to challenge determinations and amended determinations, with respect to determinations issued on or after September 30, 2007.
- 7 **Deductible earnings.** Includes holiday pay in the earnings that are deductible from an applicant's weekly benefit amount. Modifies the formula for deducting earnings (currently 25 percent of earnings or \$50, whichever is higher, is deducted) to provide that 55 percent of earnings are deducted from the weekly benefit amount. Makes these changes effective for

all benefits paid on or after September 30, 2007.

Also modifies current deduction of \$200 for earnings from service in the National Guard or the U.S. military reserve to provide that none of these earnings will be deducted, effective the Sunday following final enactment.

- 8 **Overpayment.** Requires any determination or amended determination of overpayment of benefits to state the amount of the overpayment and the statutory requirements for repaying the overpayment. Applies to all determinations issued on or after September 30, 2007.
- 9 **Request for reconsideration.** Shortens from 30 days to 20 days the period for applicants, employers, and the commissioner to file a request for reconsideration of an unemployment law judge's decision, with respect to decisions issued on or after September 30, 2007.
- 10 **Decisions.** Requires any decision or order that results in an overpayment of benefits to state the amount of the overpayment and the statutory requirements for repaying the overpayment. Applies to decisions issued on or after September 30, 2007.
- 11 **Cooperation with states on combining wages.** Modifies the commissioner's authority to enter reciprocal agreements with other states for the purpose of allowing applicants with wages from multiple states to collect benefits from a single state. Allows the commissioner to pay benefits based upon an applicant's wages from another state *only if* the applicant is combining those wages with wages credits earned in Minnesota. Provides that, only if the U.S. Secretary of Labor determines that this standard does not conform to federal law, the commissioner may pay benefits to an applicant who is combining wages earned in two or more states (*not* including Minnesota) (but only if the applicant is a resident of Minnesota who is actually living in Minnesota when the benefit application is filed). Makes this section effective the day following final enactment.
- 12 **Nonfraud overpayment.** Strikes language requiring separate overpayment determinations, consistent with new requirements (Art. 2, §§ 3, 6, 8) that that monetary, eligibility, and disqualification determinations (as well as appeals decisions) incorporate resulting overpayments. Makes this section effective September 30, 2007.
- 13 **Interest.** Makes the assessment of interest on fraud overpayments mandatory rather than discretionary. Interest would be assessed at the same rate specified in current law - one and one-half percent. Makes this section effective September 30, 2007, and applicable to all outstanding fraud overpayment balances on that date.
- 14 **Cancellation of overpayments.** Provides that overpayment debts will be cancelled 15 years after the date of determination. (Under current law, these debts are cancelled after 10 years.) Makes this section effective September 30, 2007, and applicable to all overpayments existing as of that date.
- 15 **Administrative penalties (applicant's false representations).** Shortens from 30 days to 20 days the appeal period for an applicant to challenge a finding of ineligibility due to the applicant's false representations or concealment of facts, with respect to ineligibility determinations issued on or after September 30, 2007.
- 16 **Administrative penalties (employer misconduct).** Directs the commissioner to penalize an employer the greater of \$500 or 50 percent of overpaid or reduced unemployment benefits if the employer's submission of false information or incomplete information was taken to prevent or reduce the payment of benefits, was taken to avoid payments by the employer, or caused an overpayment of unemployment benefits. Shortens from 30 days to 20 days the appeal period for employers challenging a notice of penalty for employer misconduct, with respect to assessments made on or after September 30, 2007.
- 17 **Notification and misreporting penalties.** Shortens from 30 days to 20 days the appeal period for employers challenging a penalty assessed for failure to comply with the notification requirements related to transfers of experience ratings between employers, with respect to assessments made on or after September 30, 2007.

- 18 **Day of the week and date requirement.** Requires that: (1) every unemployment determination subject to appeal must state the day of the week and the date that the determination will become final and no longer be subject to appeal, and (2) every unemployment determination subject to reconsideration must state the day of the week and the date that the determination will become final and no longer be subject to reconsideration. Makes this section effective September 30, 2007.
- 19 **Revisor's instruction.** Directs the revisor to change "30 days" to "20 days" everywhere that the term appears in statutory sections regulating liability for debts upon acquisition of a business and eligibility determinations. Provides that the change applies to eligibility determinations issued on or after September 30, 2007.

Article 3: Housekeeping Provisions

Overview

This article makes changes recommended by the department of employment and economic development for housekeeping purposes.

- 1 **Scope.** Makes technical changes.
- 2 **Employer.** Makes technical changes.
- 3 **Taxable wages.** Makes technical changes.
- 4 **Wage detail report.** Strikes unnecessary language.
- 5 **Missing or erroneous information.** Replaces references to "penalties" with references to "fees" charged for missing information on a wage detail report.
- 6 **Computation of tax rates; additional assessments.** Adds clarifying language to explain rationale for current practice.
- 7 **Computation of a taxpaying employer's experience rating.** Adds clarifying language to explain rationale for current practice.
- 8 **Experience rating history transfer.** Adds clarifying language.
- 9 **Tax rate buydown.** Makes technical changes.
- 10 **Special assessment for interest on federal loan.** Adds clarifying language.
- 11 **Cancellation of amounts due from an employer.** Makes technical changes.
- 12 **Limitations on applications and benefit accounts.** Makes technical changes. Changes terminology consistent with Article 5.
- 13 **Eligibility conditions.** Makes technical changes.
- 14 **Business owners.** Adds clarifying language.
- 15 **Offers of suitable employment.** Makes technical changes.
- 16 **Continued request for unemployment benefits denied.** Allows the commissioner to require applicants to file weekly, rather than biweekly, benefit requests. Makes technical changes.
- 17 **In-person request for unemployment benefits.** Allows the commissioner to require applicants to file weekly, rather than biweekly, benefit requests. Makes technical changes.
- 18 **Oaths; subpoenas.** Makes technical changes.
- 19 **Subpoenas; oaths.** Makes technical changes.
- 20 **Use of data.** Authorizes the dissemination of data gathered under the administration of the unemployment insurance program to the public authority responsible for child support in Minnesota or any other state. Makes technical changes.
- 21 **Commissioner of finance to be custodian; separate accounts.** Eliminates reference to the finance commissioner's authority to issue warrants upon the unemployment insurance trust fund. Makes technical changes.
- 22 **Exclusive use.** Eliminates reference to the finance commissioner's authority to issue

- warrants upon the unemployment insurance trust fund. Makes technical changes.
- 23 **Contingent account.** Strikes language that requires the commissioner to reimburse the contingent account from the administration account whenever the commissioner spends money from the contingent account for program administration that will later be paid for by federal funds. Makes technical changes. Adds clarifying language.
- 24 **Revisor's instructions.** Directs the revisor to change five terms used in specified portions of Minnesota Statutes, Chapter 268.
- 25 **Effective dates.** Makes the provisions of this article generally effective September 30, 2007.

Article 4: Administrative Rules Incorporated into Statutes

Overview

This article incorporates various provisions from current administrative rules governing unemployment insurance into the statutes. The department wants to incorporate these provisions into the statutes because the department believes doing so will clarify current practices. The incorporation of these rules is not intended to affect the application or interpretation of these provisions.

- 1 **Statement of intent.** Clarifies that the incorporation of long-standing rules into statutory language is not intended to affect the application or interpretation of any provision.
- 2 **Employment.** Amends the statutory definition of employment to include service performed by product demonstrators to aid in the sale of products and to exclude service as a juror.
- 3 **Trucking industry/independent contractors.** Adds a statutory definition of trucking industry independent contractors and employees. Provides that an owner-operator of a vehicle licensed and registered as a truck, tractor, or truck tractor is considered an employee, *unless* the individual meets all of the six criteria for being considered an independent contractor. For an owner-operator to be an independent contractor, the individual must:
- own the equipment or hold it under a lease arrangement;
 - be responsible for maintenance of the equipment;
 - bear the principal burdens of operating costs (such as fuel, repairs, supplies, vehicle insurance, and personal expenses) while on the road;
 - be responsible for supplying personal services needed to operate the equipment;
 - be compensated based not on time expended, but rather on factors related to the work performed (such as a percentage of any rate schedule); *and*
 - enter into a written contract specifying that the individual is an independent contractor, not an employee.
- 4 **Wages.** Modifies the definition of wages to state that "wages" include:
- awards, prizes, and standby pay;
 - the cash value of housing, utilities, meals, exchanges of services, and any other

goods and services provided as compensation for an employee's services;

- payments made for services as a caretaker, as directed;
- payments made for services by a migrant family, as directed;
- advances or draws against future earnings when paid (unless the payments are designated as a loan or return of capital on the employer's books when paid); and
- subject to four exceptions, payments by a subchapter "S" corporation to, or on behalf of, officers and shareholders that are reasonable compensation for services performed for the corporation.

Adds several exceptions to the general definition of wages, including:

- an employee discount or markdown on goods and services from the employer, where purchases are optional and are not a form of regular or systematic payment;
- customary and reasonable directors' fees paid to individuals who are not otherwise employed by the corporation of which they are directors;
- payments to reimburse employees for meal expenses when the employees work after their regular hours;
- payment into a trust or plan for the purpose of providing legal or dental services, if provided for all employees or a class of employees;
- the value of parking facilities provided or paid for by an employer, if provided for all employees or a class of employees;
- royalties to an owner of a franchise, license, copyright, patent, oil, mineral or other right;
- advances or reimbursement for traveling or other bona fide expenses incurred in the business of the employer;
- residual payments to radio, television, and similar artists; and
- supplemental unemployment benefits paid under a plan established by an employer, subject to statutory requirements.

5 Employer registration. Expands the statutory requirements for employers registering for an account to reflect the following current administrative requirements:

- The employer must provide the employer's actual physical street and city address when registering for a tax account or a reimbursable account.
- The employer must notify the commissioner of a change in legal entity and of a transfer, sale, or acquisition of a business conducted in Minnesota within 30 days of the change, *if* the transaction results in the creation of a new or different employer or

affects the establishment of employer accounts, assignment of tax rates, or transfer of experience rating history.

- The employer must notify the commissioner of the termination of the employer's business within 30 days.
- An employer that has terminated business regains its previous tax account (and its experience rating history) if: (1) the employer commences business within 3.5 years of the termination; (2) the experience rating history contains taxable wages; and (3) the experience rating history has not been transferred to a successor.

Also adds clarifying language to current law.

- 6 **Repealer.** Repeals rules governing unemployment insurance (from Minnesota Rules, Chapter 3315), including those incorporated into the Minnesota Statutes under this article.
- 7 **Effective date.** Provides that this article is effective September 30, 2007.

Article 5: Terminology Change

Overview

This article replaces the term "disqualify" (and similar terms) with the term "ineligible" (and similar terms), and makes changes to statutory language as necessary to accommodate this change in terminology. The changes in this article apply to all department determinations, appeals decisions, and other actions occurring on or after September 30, 2007.

The terms "disqualify" and "ineligible" are both currently used throughout unemployment insurance law, even though they have the same common meaning and the same effect under the statute. The change in terminology is intended to simplify current law, achieve consistency, and avoid confusion. It is not intended to effect a substantive change in Minnesota's unemployment law (see § 1).

Article 6: Style Change

Overview

This article makes a variety of stylistic changes to current unemployment insurance law in order to conform to the modern statutory drafting conventions recommended by the Revisor of Statutes. (For example, many of these changes include replacing the word "shall" with the word "is" and replacing the phrase "pursuant to" with the word "under.")

- 62 **Actively seeking suitable employment defined.** Amends the definition of "actively seeking suitable employment" specifying that an applicant who is seeking employment only through a union is not actively seeking suitable employment unless the applicant is in an occupation where it is required by union rule that all the hiring in that locality is done through the union by adding "or that all members are restricted to obtaining employment among signatory contractors in the construction industry."

Article 7: Extra Benefits

1 Lumber Company Extra Benefits.

Subd. 1. Extra benefits. Provides extra unemployment benefits to workers laid off after April 1, 2006, from the Ainsworth Lumber Company plants in Bemidji, Cook and Grand Rapids if the worker established a benefit account prior to March 1, 2007.

Subd. 2. Payment from fund. The extra benefits are payable from the unemployment insurance trust fund and will not be used in computing the company's experience rating.

Subd. 3. Eligibility conditions. To be eligible for the additional benefits, an applicant must have the majority of their wage credits with Ainsworth Lumber Company or Ainsworth Engineered; must meet the general requirements for unemployment benefit eligibility; not be subject to disqualification; not be entitled to regular unemployment benefits or unemployment benefits under any other state or federal law; and be enrolled in or have recently completed a reemployment assistance training program, or be within 30 days of beginning a training program under certain circumstances.

Subd. 4. Weekly amount of extra benefits. Weekly benefit amounts under the extended program are the same as benefits under the regular benefit program.

Subd. 5-7. Maximum amount of extra unemployment benefits. Any other unemployment benefits an applicant is entitled to must be exhausted before the extra benefits are available. This additional benefit program expires on December 31, 2007.

2 **Effective Date.** The bill is effective the first Sunday following final enactment.

Article 8: Filing Requirement Waiver

1 Unemployment benefits; continued request time period waiver.

Subd. 1. Conditions. Directs the commissioner of the Department of Employment and Economic Development (DEED) to accept continued request and pay unemployment benefits to applicants who were technicians or inspectors for Northwest Airlines prior to August 20, 2005, and who stopped working on or near August 20, 2005, as a result of a labor dispute between the aircraft mechanics union and the airline; did not file continued requests for unemployment benefits within the time periods required under law; and who meet all other requirements for unemployment benefits.

This section is effective July 1, 2007.