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600 State Office Building
St. Paul, MN 55155

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Linda Holmes, Legislative Analyst
(651) 296-5059

Reemployment Insurance

This information brief explains the reemployment insurance law, including which employers and types of employment are covered under the law, how employer taxes are calculated, how employee benefits are determined, and how a person qualifies for benefits.

Application of the Law

This section explains which employers and types of employment are covered by the reemployment insurance law, which was formerly known as the unemployment compensation law. Reemployment insurance in Minnesota is administered by the Department of Economic Security.

Several requirements must be met before an employee is eligible for benefits based on work he or she performs for an employer. First, the work must be done for a person or business defined by the statute as an *employer*. Second, the work must be what the statute defines as *employment*. Third, the work must fit the general definition of *covered employment.* Finally, the work must not be excluded from coverage by any of the *exceptions* to the general definitions.

What is an Employer?

The reemployment insurance system covers all *employers*. This means all individuals or organizations (partnerships, associations, trusts, corporations, etc.) that have one or more employees during the current or prior calendar year. The law covers private employers, as well as the state of Minnesota and its instrumentalities, political subdivisions of the state (such as cities and counties), and religious, charitable, and educational organizations.

The law also covers any organization or person who would not otherwise be covered but chooses to be covered.

What is Employment?

The reemployment insurance law defines *employment* as any service by an individual who is an employee according to the common law of employer-employee, as opposed to an independent contractor. This is a very broad definition, and covers almost any kind of work except for work done by a person who meets the statutory definition of an independent contractor. Employment also includes services performed by an officer of a corporation or by certain agent-drivers or commission-drivers.

What is Covered Employment?

Generally, the definition of *covered employment* involves three geographic factors: where the employer does business, where the employee lives, and where the employee works.

Although the rules and categories of coverage are complex, the general kinds of work covered by Minnesota's system are work done in Minnesota, work done by employees who live in Minnesota, and work done for employers whose places of business are in Minnesota. Many of the limitations on these broad categories exclude work that might be covered by the reemployment insurance system of another state or country.

What are the Exceptions?

There are certain kinds of employment that do not qualify employees for benefits, even if they otherwise meet the general definitions. The statute specifically defines these exceptions as *noncovered employment*. These exclusions are explained and listed below.

Exclusions Based on Employer Size and Quantity of Work Done for Employer

Agricultural employment. Generally, agricultural employment is covered only if it is performed for an employer that meets one of two tests. First, the employment is covered if the employer paid at least $20,000 in wages to agricultural employees in some calendar quarter in either the current or prior calendar year. Second, it is covered if the employer employed at least four agricultural employees in each of 20 calendar weeks during the current or prior calendar year (the employees do not have to have been employed at the same time).

Whether or not these tests are met, agricultural work done by officers and shareholders of family farm corporations and agricultural work done by individuals under 16 years old are usually not covered.

Domestic employment. Domestic service is covered only if the employer paid at least $1,000 for domestic service to all employees during any calendar quarter of the current or prior calendar year.

Miscellaneous Exceptions

There are many exceptions to coverage of what would otherwise be covered employment. Some are based on who does the work, some are based on who pays for the work, and some are based on what kind of work it is. The box shown below summarizes these exceptions.

Noncovered Employment Categories

- church employees, ministers, and members of a religious order performing their duties
- employees of certain licensed or certified public or nonprofit rehabilitation or job training programs
- prison inmates
- state or local elected government officials, state or local election officials, members of a legislative body, and judges
- persons working for state or local government in major nontenured policymaking or advisory positions or in any policymaking position requiring not more than eight hours per week
- members of the National Guard
- temporary emergency government employees
- persons engaged in casual labor not in the course of the employer's business
- individuals performing services for a son, daughter, or spouse, and children under 18 performing services for a parent
- employees of the United States, foreign, or other state government
- employees of tax-exempt organizations who earn less than $50 per quarter
- employees of tax-exempt organizations that did not employ at least one person for some portion of a day in each of 20 calendar weeks during the current or prior calendar year
- certain students working at their schools, under a school work experience program, or as part of certain internship programs
- patients working at hospitals
- student nurses and interns
- insurance agents and real estate agents, if paid solely by commission
- newspaper deliverers under age 18
- direct sellers
- employment for certain Indian or Indian-controlled employers, if the work is performed on an Indian reservation or on Indian trust land
- employment that is subject to reemployment benefits established by Congress

How Are Employer Taxes Calculated?

This section explains the state and federal taxes imposed to support unemployment/reemployment insurance programs.

Basic Calculation

Employers in the state pay taxes to the reemployment insurance fund based on the wages of each employee. The rate of the tax depends on the employer's recent experience with reemployment insurance.

The basic calculation is set out in the box below.

State tax = taxable wages of all employees x the employer's tax rate

Taxable Wages

An employee's taxable wages never exceed 60 percent of the average annual wage in the state, rounded to the nearest $100. This cap on taxable wages is $18,100 for 1999. If the employee earns less than that, then the employer is taxed on the entire amount, but if the employee earns more, only that first $18,100 is taxed.

Tax Rate

The tax rate equals the **minimum tax rate** plus an **experience rating** (described on page 6). If the employer's experience rating is 0.1 percent or less, the employer is simply charged the minimum tax rate.

Minimum Tax Rate

The minimum tax rate for 1999 is 0.1 percent. The minimum tax rate is set for the next calendar year based on the balance in the reemployment insurance fund on June 30. The formula for setting this rate is set by statute, and the rate increases if the balance in the reemployment insurance fund decreases. The minimum tax rate can increase from a minimum of 0.1 percent to a maximum of 0.6 percent, depending on the balance in the fund.

Solvency Assessment

The solvency assessment is designed to put additional money into the fund when the balance is low. If the balance in the fund is less than $150 million on June 30 of any year, then each employer pays a quarterly solvency assessment in the following year equal to 10 percent of its annual tax. There will not be a solvency assessment in 1999.

Experience Rating

The experience rating is calculated by multiplying 1.25 times the total "benefits charged" to the employer's account during the "chargeable period" and dividing the product by the employer's taxable payroll for the same period. The intended effect of this rating system is to impose a higher tax rate on the employers whose former employees collect benefits.

$$\textbf{Experience Rating} = 1.25 \times \frac{\text{benefits charged to employer}}{\text{taxable payroll}}$$

A new experience rating for each employer is calculated each June 30 for use in the next calendar year and is based on benefit charges and taxable payroll during the chargeable period. As of this year, the experience rating is capped at a maximum of 8.9 percent.

If an employer has an experience rating greater than 0.1 percent, then its tax rate equals the experience rating added to the minimum tax rate. For example, if the employer's experience rating were 5.2 percent, then its tax rate in 1999 would be 5.3 percent, equal to the minimum of 0.1 added to the experience rating of 5.2. Because the minimum tax rate is currently 0.1 percent and the maximum experience rating is 8.9 percent, the current maximum total tax rate is 9 percent. If the balance in the fund were to drop dramatically and the minimum tax rate increased to its upper limit of 0.6 percent, then the maximum total tax rate would be 9.5 percent.

The Chargeable Period

This is the period of time that the employer has been subject to the reemployment insurance law, but not more than 60 months back from the date that the rating is calculated and not less than 12 months back. The effect is that the employer's tax rate generally reflects the last five years of the employer's history of layoffs and other involuntary separations. If the employer has been subject to the law less than 12 months, then it will be specially treated as a new employer. New employers are discussed on page 8.

Benefits Charged

Benefits are charged to the employer's account as and when they are paid, subject to certain exceptions. If an employee worked for more than one employer during the base period, the amount charged to each is prorated based on the percentage of wage credits earned from each employer during the entire period. For example, an employee could be laid off from one job he or she had held for years, take another job, and be laid off from that job after only a few weeks, and as long as other eligibility conditions were met, the employee could collect benefits. The short-term second employer, however, would not be charged for all of the benefits paid to the employee, but only for the small share that is proportional to what the employee was paid in the second job.

There are also other exceptions to charging benefits in which the benefits paid to the employee will not be "counted against" the employer for experience rating purposes. In other words, the employee still can collect, but the employer is not penalized when his or her tax is calculated. The costs of benefits not charged to the employer are absorbed by the system, as would be benefits paid to employees of an insolvent employer.

Benefits are not charged:

- if paid to an employee who requalified for benefits after being disqualified
- if the employee's discharge is mandated by certain laws, like a law mandating a criminal background check
- if the employee quits the employment or is discharged for gross misconduct
- in some circumstances in which the discharge results from a disaster
- if the part-time or volunteer employment continues to be available while the employee receives benefits for part-time employees or employers of volunteer firefighters or ambulance personnel
- if the employee received wages of less than $500 from the employer

Successor Employers

The experience rating transfers to a successor employer who acquires all or substantially all of the assets or business of an experience-rated employer only if there is 25 percent commonality of ownership between owner and successor. For example, if a business owner sold his or her entire business to another unrelated person, then there would be no transfer of the experience rating and the new business would be considered a new employer. If, however, a small business owner formed a partnership with another person and sold the business to the partnership, then the old experience rating could be retained. This 25 percent threshold is new as of 1998.

Voluntary Payments to Reduce Experience Rating

An employer may cancel the effect of some or all of the benefits charged to its account by paying an amount equal to some or all of the benefits charged, plus a 25 percent surcharge. Voluntary payment must be made within 30 days of receiving the notice of tax rate. As a result of the cancellation, the benefits paid to the employer's former employees will have a zero or a reduced effect on the employer's experience rating. If for example, the employer had had two employees

collect a total of $8,000 in benefits, and no other layoffs in the last five years, it could pay the fund $10,000 and get a new experience rating of zero. Because the experience rating is rounded to the nearest 0.1 percent, the payment of a relatively small amount will cause the experience rating to be rounded down, which can result in significant savings for an employer with a large taxable payroll.

New Employers

New employers are taxed at the average statewide cost rate for the preceding 60 months, from a minimum of 1 percent to a maximum of 5.4 percent. New employers in the construction industry must pay the five-year average cost rate for the construction industry, from a minimum of 1 percent to a maximum of 8.9 percent plus the minimum tax rate. Once an employer has 12 months of experience as of June 30 of any year, the employer will be rated like any other employer with the new rates effective the following January.

Public and Nonprofit Employers

Public and nonprofit employers do not pay reemployment insurance taxes. Instead employers reimburse the system directly for exactly the amount of benefits their former employees are paid. The effect is that while these "reimbursing employers" pay their own costs, they are not part of the risk-spreading that affects other employers. The state and political subdivisions are charged quarterly for the benefits paid to their former employees during that period. Nonprofit organizations may choose to be treated like government employers, being charged the amount of benefits collected by their employees, or like private employers, paying taxes. Public employers also may elect to be treated like private employers. Public or nonprofit employers may open joint accounts to share costs.

Dislocated Worker Assessment

Since 1991, all employers subject to the reemployment insurance tax also pay a 0.1 percent dislocated worker assessment on each employee's taxable wages, which do not exceed $18,100 (see page 5). Government, nonprofit religious, educational, and charitable employers are not subject to the assessment.

What is the Federal Unemployment Tax?

Employers in Minnesota, as in all other states, pay federal unemployment taxes, as well as state taxes. Under the Federal Unemployment Tax Act (FUTA), federal taxes are used to pay for the administration of the reemployment insurance program, job service, Bureau of Labor Statistics, and, in some cases, to repay state debt to the federal fund.

Currently, employers in states like Minnesota that conform to federal law and have not been in debt pay a rate of 0.8 percent on the first $7,000 of wages paid to each employee ($56). The rate paid to the federal government includes a 5.4 percent credit on the actual federal rate of 6.2

percent. The credit, worth $378 per employee, is available because Minnesota's reemployment law conforms to federal requirements. Obviously, such a sizable credit creates a powerful incentive for states to keep their laws consistent with the federal guidelines.

How Are Employee Benefits Determined?

This section explains the method used to calculate benefits, defines eligibility and benefit rules, and describes benefit limits.

In 1987, the Minnesota Legislature converted the reemployment insurance system from a "weeks-worked system" to a "quarterly system" for determining benefits. The quarterly system, which was strongly recommended by the federal government, is also called the "wage record system." The system requires all employers to report the wages earned by each employee during every calendar quarter. This conversion caused major changes in the formulas for determining eligibility for benefits and calculating benefits.

How Does the Quarterly System Work?

Purpose and Effects

The purpose of the wage record system is to ease administration of the reemployment insurance system by enabling the department to determine potential entitlement and benefit amounts using records that exist prior to the claim. When a reemployment insurance application is filed, the department will already have a record of the claimant's earnings on which to determine entitlement. Under the old system–the wage request system–the department contacted the base period employers after the application was filed to determine the claimant's wages.

The wage record system is also designed to reduce fraud and ensure accurate tax collection and benefit payments. In addition, the system allows government agencies to reduce improper double payment of benefits by cross-checking various assistance programs. The system also provides comprehensive earnings data for the state, which enhances evaluation of government programs.

Benefit Terminology

The base period and related terms are important in understanding the quarterly system.

Base period. Under the quarterly system, the base period is usually the first four of the last five completed calendar quarters preceding the application.

High quarter. The high quarter is the calendar quarter during the base period in which the claimant had the highest earnings.

Lag quarter. The lag quarter is the last completed calendar quarter preceding the quarter in which the application is filed. The lag quarter is not part of the base period.

Uncompleted quarter. The uncompleted quarter is the quarter in which the application is filed.

The ideas behind these definitions are illustrated by this example:

Effective application date:	10-19-98
Uncompleted quarter:	10-1-98 to 12-31-98
Lag quarter:	7-1-98 to 9-30-98
Base period:	7-1-97 to 6-30-98

Benefits Under the Quarterly System

The calendar quarter is the primary unit for determining the amount of available benefits. A claimant is eligible for benefits if the claimant had enough wages paid during the four calendar quarters of the base period. The weekly benefit amount and total benefit amount are based on the amount of wages paid during the base period.

Lag Quarter

Under the quarterly system, the lag quarter delays access to benefits for otherwise qualified claimants who are new entrants to the labor market. A new entrant to the labor force may have to wait up to five months after a layoff to receive benefits. This happens because the lag quarter and the uncompleted quarter (defined above) are not immediately included in the base period. The wages paid during these quarters cannot be counted immediately because of the time needed to receive and process quarterly reports.

If an employee begins to work in one calendar quarter and is laid off during the next, the employee must wait until the end of the following calendar quarter to receive benefits. For example, an employee who begins work on January 1 and is laid off on April 30 will not be eligible for benefits until October 1. Similarly, an employee might work for 26 weeks (January 1 to June 29) and then have to wait 13 weeks (October 1) before beginning to collect benefits. Remember, it is not that the wages paid to the employee during the last two quarters of employment will never be counted toward calculating benefits, it is only that they cannot be counted until some time has passed.

Earnings in Two Quarters

Because qualification depends on earnings in two calendar quarters, qualification or non-qualification may be fortuitous in some cases. For example, two employees who both worked 15 weeks during the year and earned identical salaries would not necessarily both qualify for benefits: an employee who worked 13 weeks in one quarter and two weeks in another would not qualify, while an employee who worked ten weeks in one quarter and five in another would qualify. (This is because claimants are required to be paid at least one-fourth as much in the rest of the base period as they were paid in their high quarter.)

How is Access to Benefits Determined?

The claimant's access to benefits is determined by a minimum earnings test, by limitations on the total amount of benefits available, and by limitations on the timing of benefits which affect workers with short employment histories.

The Minimum Earnings Test

In order to be eligible for benefits under the quarterly system, an individual must:

1) have wages paid in covered employment in two or more calendar quarters during the base period; and

2) meet the following minimum earnings test:

   - high quarter wages paid of at least $1,000

   - total wages paid during the base period of 1.25 times the wages paid during the high quarter (defined in page 9).

The quarterly system makes qualification easier for permanent, part-time employees than did the old weeks-worked system. Thus, an employee making $77 per week would qualify under the new system, whereas under the old system, an employee had to be paid $108 per week to qualify. Note that there is no longer any requirement for any particular number of weeks of work to qualify for benefits.

Seasonal Workers

A special earnings test determines access to benefits for seasonal workers. Employees of a single employer in the recreation or tourist industry which has available employment for less than 15 weeks must be able to qualify for benefits without regard to the wages paid in the seasonal employment in order to be eligible. Also, the employee receives no credit for seasonal employment in calculating benefits that are received out of season.

Amount of Benefits

Weekly Benefit Amount

The weekly benefit amount paid to the claimant is the higher of two possible amounts. The first amount is one-half of the employee's average weekly wage during the entire base period, capped at two-thirds of the state's average weekly wage. The second is one-half of the employee's average weekly wage during the high quarter only, capped at one-half of the state's average weekly wage.

The effect of these alternative calculations is that if an employee had one quarter in which he or she received unusually high wages compared to the rest of the base period, the effect of that "spike" in wages would be muted somewhat by the lower statutory maximum applied to the benefit amount. The two different caps mean that the system may give a higher weekly benefit amount to a claimant who works all year for a particular salary than to one who earns that same salary in one quarter only, and earns a lower salary for the rest of the year. Under the old system, which calculated benefits based on high quarter wages only, the employees would be treated the same way.

Ultimately, this change in the calculation of the weekly benefit amount is best understood as an effort to make the weekly benefit amount a more accurate reflection of the wage the employee received on a regular basis while employed, because the purpose of the reemployment insurance system is temporary wage replacement. An artificially elevated weekly benefit amount may also decrease the claimant's incentive to promptly seek work after leaving employment.

Maximum Amount of Benefits

The maximum total amount of benefits limits the number of weeks that a claimant can collect benefits. Under the quarterly system, the maximum amount of benefits equals one-third of the claimant's base period wages, not to exceed 26 times the weekly benefit amount (WBA) which will normally mean a 26-week maximum. The employee is paid the WBA during each week of unemployment, less certain deductions that are described below. Benefits continue until the total benefits are exhausted, as long as the claimant remains eligible.

Additional Benefits

An employee who is laid off as a result of a significant reduction in operations may be entitled to up to 13 weeks of additional benefits. The reduction must involve: a facility employing 100 or more individuals; a layoff of at least 50 percent of the workforce, with no plan to rehire; and a county where the unemployment rate was at least 10 percent. The employee must be otherwise eligible for benefits, must have exhausted regular benefits, and must have earned a majority of his or her wages paid in the base period with the employer involved in the reduction.

What Are the Limits on Benefits?

Reductions for Work

A claimant may work and still be eligible for benefits if the weekly earnings are less than the weekly benefit amount. If the earnings are less than the weekly benefit amount, only a part of those earnings are deducted from the benefit amount that the claimant can collect. The first $50 of earnings or 25 percent of the claimant's weekly benefit amount (whichever is greater) is not subtracted from the benefits for that week, but all earnings above that threshold are deducted. The amount over $200 in National Guard or U.S. military unit pay is deducted. No deductions are made for earnings for service as a volunteer firefighter or ambulance worker.

Second Accounts

A claimant may not establish a second benefit account following the expiration of a prior benefit account unless the claimant

- works in covered employment after the effective date of the prior benefit account;
- earns minimum qualifying wage credits in covered employment; and
- earns eight times the weekly benefit amount (using the WBA from the first benefit account).

The purpose of the provision regarding second benefit accounts is to ensure that an individual cannot establish more than one reemployment insurance benefit account as a result of one separation from employment.

Waiting Week

A claimant is not entitled to benefits for the first week of unemployment, known as the waiting week. The waiting week does not have to be served if the employment ended due to a disaster and the employee would be eligible for federal disaster unemployment assistance but for the availability of state benefits.

Unemployed Owner of a Business

An owner of 25 percent of the base period employer corporation (or the spouse, parent, or minor child of the owner) is limited to four weeks of benefits if the person is not permanently separated from the employment.

Severance, Vacation Pay, and Other Benefits

Weekly reemployment insurance benefits must be reduced by amounts received as severance pay, vacation pay, workers' compensation for lost wages, pensions that are either employer-contributed or employer/employee-contributed, employer-paid annuities, or backpay (if based on

wages earned within two years of the payment). Holiday pay is deducted, except for the first $50 or the first 25 percent, whichever is greater. Lump sum severance payments are allocated over a period equal to the lump sum divided by the employee's regular pay and deducted accordingly. Fifty percent of social security benefits are deducted.

How Does a Person Qualify for Benefits?

This section explains the conditions that must be met to qualify for benefits and the circumstances that can disqualify a claimant from receiving benefits.

What Conditions Must be Met to Receive Benefits?

To qualify for benefits, a person in covered employment who meets the minimum earnings test, must also on a weekly basis

- participate in reemployment services if appropriate;
- file bi-weekly continued claims for benefits; and
- be able to work, available to work, and actively seeking work.

Weekly benefits are reduced by one-fifth for every day the individual is unable to work or unavailable for work.

Some individuals in special circumstances have other limitations

- Secondary students do not qualify for benefits, either in school or while on vacation.

- A claimant cannot receive benefits in any week in which the claimant collects unemployment benefits from any other state or federal program.

- Aliens can collect benefits only if lawfully in the country, lawfully employed, and in possession of proper work authorizations.

- Teachers and principals do not receive benefits between terms or during vacation periods if there is a reasonable assurance that employment will continue during the following term. Other school employees are similarly treated, except that if employment does not in fact continue, the individual may receive retroactive payment of the benefits subject to the weekly qualifications listed above.

- Professional athletes do not receive benefits if there is reasonable assurance that employment will continue the following season.

What Can Disqualify a Person from Receiving Benefits?

Quitting or Discharge for Misconduct

Quitting. An employee is generally disqualified from receiving benefits if the employee quits employment for other than a good reason caused by the employer. Quitting is defined as a separation from employment where the decision to end the employment was the employee's.

An employee who quits employment *is not disqualified* from receiving benefits in any of the following circumstances:

- The employee quits for a good reason caused by the employer (defined as a reason connected with work that would compel an average reasonable person to quit)
- The employee quits to accept other covered employment but does not work long enough at that subsequent employment to otherwise requalify.
- The employee quits within the first 30 calendar days because the employment was unsuitable.
- The employee quits unsuitable employment to enter approved training.
- The employee quits employment that was part-time where the claimant had full-time employment in the base period.
- The employee quits because a serious illness made it medically necessary to quit, provided the employee made reasonable efforts to retain the employment, including informing the employer of the medical problem.

Discharge for misconduct. A discharge for misconduct occurs when an employee is discharged as a result of conduct by the employee that interferes with or adversely affects the employment and violates the standards of behavior that the employer has the right to expect.

An employee who is discharged for misconduct *is not disqualified* under either of the following circumstances:

- The misconduct was a direct result of the claimant's serious illness, provided the claimant made reasonable efforts to retain the employment, including informing the employer of the medical problem.
- The employment was part-time and the claimant had full-time employment in the base period.

Employer charges. Benefits paid to employees after quitting or a discharge for misconduct generally may not be used as a factor in determining the employer's tax rate. There is no charge to an employer's account after failure of an employee to accept an offer of suitable reemployment or employment substantially similar to the employment formerly available from that employer.

Requalification. An employee disqualified for quitting or for a discharge for misconduct may requalify for benefits under the following conditions: (1) the employee returns to work and earns eight times the weekly benefit amount in other covered employment; and (2) the employee is subsequently terminated for a nondisqualifying reason.

Discharge for gross misconduct

If an employee is discharged for gross misconduct that interferes with and adversely affects employment, the individual is disqualified until the claimant returns to work and earns 12 times the weekly benefit amount. Further, all wage credits earned with the employer from whom the employee is discharged are canceled.

Gross misconduct is defined as any act that would amount to a felony or gross misdemeanor. For health care workers, gross misconduct includes patient and resident abuse. If an employee is convicted of a felony or gross misdemeanor involving the same conduct for which the employee was discharged, it is conclusively presumed to be gross misconduct if connected to work.

There is no disqualification for acts committed after separation from employment.

Disciplinary Suspension

If an employee is suspended for misconduct for less than 30 days, the employee is not eligible for benefits. A suspension of more than 30 days is treated like a discharge.

Failure to Apply for or Accept Suitable Work

An employee who fails to apply for or accept suitable employment or reemployment is disqualified for benefits until the employee earns eight times the weekly benefit amount.

Suitable work is determined by a number of factors: pay level, degree of risk, physical fitness, prior training and experience, length of unemployment, prospects for employment in customary field, and distance to work. Work is not suitable if vacant because of strike, lockout, or other labor dispute, if the wages, hours, or working conditions are less than those prevailing for similar work in that location, if required to join, resign from, or refrain from joining a labor organization, or if the individual is in an approved training program.

Labor Dispute

An employee is not eligible for benefits during a strike if the individual is participating in or is directly interested in the strike or work stoppage. A person who is laid off as a result of a strike and is not participating in or directly interested in the strike is ineligible for the week during which the strike or labor dispute commenced.

A person is not disqualified for benefits who becomes unemployed because of (1) a dispute caused by the employer's willful failure to comply with safety or health requirements of a contract; (2) an official citation for violating state or federal occupational safety and health law; (3) a lockout; or (4) a dismissal during a period of negotiation prior to commencement of a strike.