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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 3238

02/10/2022

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The bill was read for the first time and referred to the Committee on Workforce and Business Development Finance and Policy

1.1 A bill for an act

1.2 relating to unemployment insurance; replenishing the unemployment trust fund;

1.3 repaying interest; modifying the base tax rate for calendar year 2022; eliminating

1.4 the special assessment and additional assessment for calendar year 2022;

1.5 appropriating money; amending Minnesota Statutes 2020, sections 268.085,

1.6 subdivision 7; 268.101, subdivision 2; repealing Minnesota Statutes 2020, section

1.7 268.085, subdivision 8.

1.8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.9 ARTICLE 1

1.10 UNEMPLOYMENT INSURANCE TRUST FUND REPLENISHED AND INTEREST
1.11 PAID

1.12 Section 1. UNEMPLOYMENT BASE TAX RATE, ADDITIONAL ASSESSMENT,
1.13 AND SPECIAL ASSESSMENT FOR CALENDAR YEAR 2022.

1.14 Subdivision 1. Base tax rate. Notwithstanding Minnesota Statutes, section 268.051,
1.15 subdivision 2, in calendar year 2022, the base tax rate under Minnesota Statutes, section
1.16 268.051, subdivision 2, paragraph (b), is four-tenths of one percent.

1.17 Subd. 2. Additional assessment. Notwithstanding Minnesota Statutes, section 268.051,
1.18 subdivision 2, in calendar year 2022, the additional assessment under Minnesota Statutes,
1.19 section 268.051, subdivision 2, paragraph (c), is zero percent.

1.20 Subd. 3. Special assessment. Notwithstanding Minnesota Statutes, sections 268.051,
1.21 subdivision 8, and 268.194, subdivision 6, paragraph (c), in calendar year 2022, the special
1.22 assessment under Minnesota Statutes, section 268.051, subdivision 8, is zero percent.

1.23 Subd. 4. Employer credits. Notwithstanding any law to the contrary, the commissioner
1.24 of employment and economic development must credit each taxpaying employer for:

2.1 (1) any base tax rate amount assessed and paid in calendar year 2022 under Minnesota
2.2 Statutes, section 268.051, subdivision 2, paragraph (b), that is greater than four-tenths of
2.3 one percent;

2.4 (2) any additional assessment amount assessed and paid in calendar year 2022 under
2.5 Minnesota Statutes, section 268.051, subdivision 2; and

2.6 (3) any special assessment amount assessed and paid in calendar year 2022 under
2.7 Minnesota Statutes, section 268.051, subdivision 8.

2.8 Subd. 5. **Interest payments.** (a) Notwithstanding Minnesota Statutes, sections 268.051,
2.9 subdivision 8, and 268.194, subdivision 6, paragraph (c), or any other law to the contrary,
2.10 the commissioner of employment and economic development must pay any accrued interest
2.11 due on any loan from the federal unemployment trust fund under Minnesota Statutes, section
2.12 268.194, subdivision 6, in calendar year 2022, with the amount transferred in section 2,
2.13 paragraph (c).

2.14 (b) Within ten days following enactment of this section, the commissioner of employment
2.15 and economic development, in consultation with the commissioner of management and
2.16 budget, must determine the amount of accrued interest due for payment on any loan from
2.17 the federal unemployment trust fund under Minnesota Statutes, section 268.194, subdivision
2.18 6, for calendar year 2022, and report this amount to the chairs of the legislative committees
2.19 with jurisdiction over unemployment insurance.

2.20 **EFFECTIVE DATE.** This section is effective the day following final enactment.

2.21 Sec. 2. **APPROPRIATION.**

2.22 (a) Notwithstanding any law to the contrary, \$1,150,000,000 in fiscal year 2022 is
2.23 appropriated from the state fiscal recovery fund to the commissioner of management and
2.24 budget for transfer to Minnesota's account in the Unemployment Trust Fund in the United
2.25 States Treasury, for the purpose of replenishing the unemployment trust fund.

2.26 (b) If, after the appropriation in paragraph (a), the unemployment trust fund has a negative
2.27 balance, the commissioner of management and budget must transfer from the general fund
2.28 to Minnesota's account in the Unemployment Trust Fund in the United States Treasury, the
2.29 amount necessary to bring the unemployment trust fund balance to \$0. This transfer must
2.30 be completed no later than March 15, 2022.

2.31 (c) Notwithstanding any law to the contrary, the commissioner of management and
2.32 budget must transfer from the general fund to the special account under Minnesota Statutes,
2.33 section 268.051, subdivisions 8, paragraph (b), the amount determined under section 1,

3.1 subdivision 5, paragraph (b). This transfer must be completed no later than September 15,
3.2 2022.

3.3 **EFFECTIVE DATE.** This section is effective the day following final enactment.

3.4 **ARTICLE 2**

3.5 **UNEMPLOYMENT POLICY**

3.6 Section 1. Minnesota Statutes 2020, section 268.085, subdivision 7, is amended to read:

3.7 Subd. 7. **School employees; between terms denial.** (a) Wage credits from employment
3.8 with an educational institution or institutions may not be used for unemployment benefit
3.9 purposes for any week during the period between two successive academic years or terms
3.10 if:

3.11 (1) the applicant had employment for an educational institution or institutions in the
3.12 prior academic year or term; and

3.13 (2) there is a reasonable assurance that the applicant will have employment for an
3.14 educational institution or institutions in the following academic year or term.

3.15 This paragraph applies to a vacation period or holiday recess if the applicant was
3.16 employed immediately before the vacation period or holiday recess, and there is a reasonable
3.17 assurance that the applicant will be employed immediately following the vacation period
3.18 or holiday recess. This paragraph also applies to the period between two regular but not
3.19 successive terms if there is an agreement for that schedule between the applicant and the
3.20 educational institution.

3.21 This paragraph does not apply if the subsequent employment is substantially less
3.22 favorable than the employment of the prior academic year or term, or the employment prior
3.23 to the vacation period or holiday recess.

3.24 (b) Paragraph (a) does not apply to:

3.25 (1) an applicant who, at the end of the prior academic year or term, had an agreement
3.26 for a definite period of employment between academic years or terms in other than an
3.27 instructional, research, or principal administrative capacity and the educational institution
3.28 or institutions failed to provide that employment; or

3.29 (2) an applicant in a position for which no license is required by the Professional Educator
3.30 Licensing and Standards Board or the Board of School Administrators.

4.1 (c) If unemployment benefits are denied to any applicant under paragraph (a) who was
4.2 employed in the prior academic year or term in other than an instructional, research, or
4.3 principal administrative capacity and who was not offered an opportunity to perform the
4.4 employment in the following academic year or term, the applicant is entitled to retroactive
4.5 unemployment benefits for each week during the period between academic years or terms
4.6 that the applicant filed a timely continued request for unemployment benefits, but
4.7 unemployment benefits were denied solely because of paragraph (a).

4.8 (d) This subdivision applies to employment with an educational service agency if the
4.9 applicant performed the services at an educational institution or institutions. "Educational
4.10 service agency" means a governmental entity established and operated for the purpose of
4.11 providing services to one or more educational institutions.

4.12 (e) This subdivision applies to employment with Minnesota, a political subdivision, or
4.13 a nonprofit organization, if the services are provided to or on behalf of an educational
4.14 institution or institutions.

4.15 (f) Paragraph (a) applies beginning the Sunday of the week that there is a reasonable
4.16 assurance of employment.

4.17 (g) Employment and a reasonable assurance with multiple education institutions must
4.18 be aggregated for purposes of application of this subdivision.

4.19 (h) If all of the applicant's employment with any educational institution or institutions
4.20 during the prior academic year or term consisted of on-call employment, and the applicant
4.21 has a reasonable assurance of any on-call employment with any educational institution or
4.22 institutions for the following academic year or term, it is not considered substantially less
4.23 favorable employment.

4.24 (i) A "reasonable assurance" may be written, oral, implied, or established by custom or
4.25 practice.

4.26 (j) An "educational institution" is a school, college, university, or other educational entity
4.27 operated by Minnesota, a political subdivision or instrumentality thereof, or a nonprofit
4.28 organization.

4.29 (k) An "instructional, research, or principal administrative capacity" does not include
4.30 an educational assistant.

5.1 Sec. 2. Minnesota Statutes 2020, section 268.101, subdivision 2, is amended to read:

5.2 Subd. 2. **Determination.** (a) The commissioner must determine any issue of ineligibility
5.3 raised by information required from an applicant under subdivision 1, paragraph (a) or (c),
5.4 and send to the applicant and any involved employer, by mail or electronic transmission, a
5.5 document titled a determination of eligibility or a determination of ineligibility, as is
5.6 appropriate. The determination on an issue of ineligibility as a result of a quit or a discharge
5.7 of the applicant must state the effect on the employer under section 268.047. A determination
5.8 must be made in accordance with this paragraph even if a notified employer has not raised
5.9 the issue of ineligibility.

5.10 (b) The commissioner must determine any issue of ineligibility raised by an employer
5.11 and send to the applicant and that employer, by mail or electronic transmission, a document
5.12 titled a determination of eligibility or a determination of ineligibility as is appropriate. The
5.13 determination on an issue of ineligibility as a result of a quit or discharge of the applicant
5.14 must state the effect on the employer under section 268.047.

5.15 If a base period employer:

5.16 (1) was not the applicant's most recent employer before the application for unemployment
5.17 benefits;

5.18 (2) did not employ the applicant during the six calendar months before the application
5.19 for unemployment benefits; and

5.20 (3) did not raise an issue of ineligibility as a result of a quit or discharge of the applicant
5.21 within ten calendar days of notification under subdivision 1, paragraph (b);
5.22 then any exception under section 268.047, subdivisions 2 and 3, begins the Sunday two
5.23 weeks following the week that the issue of ineligibility as a result of a quit or discharge of
5.24 the applicant was raised by the employer.

5.25 A communication from an employer must specifically set out why the applicant should
5.26 be determined ineligible for unemployment benefits for that communication to be considered
5.27 to have raised an issue of ineligibility for purposes of this section. A statement of "protest"
5.28 or a similar term without more information does not constitute raising an issue of ineligibility
5.29 for purposes of this section.

5.30 (c) Subject to section 268.031, an issue of ineligibility is determined based upon that
5.31 information required of an applicant, any information that may be obtained from an applicant
5.32 or employer, and information from any other source.

6.1 (d) Regardless of the requirements of this subdivision, the commissioner is not required
6.2 to send to an applicant a copy of the determination where the applicant has satisfied a period
6.3 of ineligibility because of a quit or a discharge under section 268.095, subdivision 10.

6.4 (e) The department is authorized to issue a determination on an issue of ineligibility
6.5 within 24 months from the establishment of a benefit account based upon information from
6.6 any source, even if the issue of ineligibility was not raised by the applicant or an employer.

6.7 If an applicant obtained unemployment benefits through misrepresentation under section
6.8 268.18, subdivision 2, the department is authorized to issue a determination of ineligibility
6.9 within 48 months of the establishment of the benefit account.

6.10 If the department has filed an intervention in a worker's compensation matter under
6.11 section 176.361, the department is authorized to issue a determination of ineligibility within
6.12 48 months of the establishment of the benefit account.

6.13 (f) A determination of eligibility or determination of ineligibility is final unless an appeal
6.14 is filed by the applicant or employer within ~~20~~ 60 calendar days after sending. The
6.15 determination must contain a prominent statement indicating the consequences of not
6.16 appealing. Proceedings on the appeal are conducted in accordance with section 268.105.

6.17 (g) An issue of ineligibility required to be determined under this section includes any
6.18 question regarding the denial or allowing of unemployment benefits under this chapter
6.19 except for issues under section 268.07. An issue of ineligibility for purposes of this section
6.20 includes any question of effect on an employer under section 268.047.

6.21 **Sec. 3. REPEALER.**

6.22 Minnesota Statutes 2020, section 268.085, subdivision 8, is repealed.

268.085 ELIGIBILITY REQUIREMENTS; PAYMENTS THAT AFFECT BENEFITS.

Subd. 8. **Services for school contractors.** (a) Wage credits from an employer are subject to subdivision 7, if:

(1) the employment was provided under a contract between the employer and an elementary or secondary school; and

(2) the contract was for services that the elementary or secondary school could have had performed by its employees.

(b) Wage credits from an employer are not subject to subdivision 7 if:

(1) those wage credits were earned by an employee of a private employer performing work under a contract between the employer and an elementary or secondary school; and

(2) the employment was related to food services provided to the school by the employer.