

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the adoption of) NOTICE OF ADOPTION OF
Temporary Emergency Rule V) TEMPORARY EMERGENCY RULE
pertaining to unemployment insurance)
benefits related to the COVID-19)
pandemic)

TO: All Concerned Persons

1. The Department of Labor and Industry is adopting the following emergency rule for the following reasons:

A. On March 12, 2020, Governor Steve Bullock declared an emergency in the State of Montana with regards the COVID-19 pandemic in Executive Order 2-2020.

B. On March 13, 2020, President Donald J. Trump declared a national emergency due to the COVID-19 pandemic.

C. On March 14, 2020, Governor Steve Bullock extended the emergency in the State of Montana with regards the COVID-19 pandemic in Executive Order 3-2020.

D. Since then, Governor Steve Bullock has issued various emergency directives ordering Montanans to shelter in place and ordering schools and non-essential businesses to close, in order to limit the spread of COVID-19.

E. On March 27, 2020, President Donald J. Trump signed into law federal legislation, the CARES Act, providing for emergency unemployment compensation benefits in response to the COVID-19 pandemic.

F. The Commissioner of Labor and Industry also finds that under the emergency circumstances of the COVID-19 pandemic, there is an immediate peril to the public health, safety, and welfare, due to widespread temporary layoffs arising from the emergency existing shelter-in-place directives for all Montanans not engaged in essential business operations. The commissioner further finds that there is imminent peril to the public welfare, as expressed in the public policy of the State of Montana by 39-51-102, MCA, that those widespread temporary layoffs by employers will cause serious economic harm to employees and self-employed individuals who are without income during periods of layoff caused by the COVID-19 pandemic.

G. The Commissioner of Labor and Industry further finds that the emergency conditions present in Montana restrict the ability of Montanans to apply for, travel to, and interview with prospective employers. Those conditions have also changed the

availability of jobs on the job market. Additionally, the CARES Act allows tens of thousands of Montana small business owners and independent contractors, for the first time ever, to apply for emergency unemployment benefits. The Montana unemployment insurance program online and telephone benefit system is and has been experiencing unprecedented demands from Montanans who are trying to file unemployment insurance claims. Unemployment insurance claims filings have increased as much as 1,700% in the course of one week. Due to this emergency and its necessary responses, the regular requirements for unemployment insurance claimants must be altered. Normally, eligible claimants must be able, available, and actively seeking new work to continue eligibility for unemployment compensation benefits, and to maintain records showing their work search efforts. However, those requirements cannot be fully met by most applicants under the current emergency directives, and therefore those requirements must be modified in light of the COVID-19 pandemic.

H. The Commissioner of Labor and Industry further finds that the application of ARM 24.11.451, Six-Week Rule, is inappropriate, inequitable, and unworkable if applied to layoffs or separations arising during the COVID-19 pandemic. The commissioner finds that under the circumstances of the present emergency, the department should, and will, only investigate and adjudicate the most recent separation that occurred prior to the effective date of the claim.

I. There is reasonable necessity to immediately adopt a temporary emergency rule for unemployment insurance purposes in order to protect the public health, safety, and welfare, because of the emergency conditions of the COVID-19 pandemic. There is reasonable necessity to immediately adopt a temporary emergency rule pursuant to 10-3-104, MCA, affecting the operation of the state unemployment insurance program. There is reasonable necessity to immediately adopt a temporary emergency rule to ensure that the state unemployment insurance program can reasonably accommodate the expanded benefits available under the CARES Act, in order to prevent the harm of widespread unemployment due to the COVID-19 pandemic for the reasons stated by the public policy expressed in 39-51-102, MCA.

2. The temporary emergency rule is effective April 10, 2020, when this rule notice is filed with the Secretary of State.

3. The text of the temporary emergency rule provides as follows:

NEW RULE V ADDITIONAL SPECIAL EMERGENCY PROVISIONS

(1) During the duration of the emergency declarations and directives related to the COVID-19 pandemic issued by the Governor, the following apply:

(a) Regarding ARM 24.11.447, the registration and active status requirements are deemed to be fulfilled if the claimant has an account registered with MontanaWorks.com or, if filing over the phone or on paper, the department has established an account for the claimant.

(b) Regarding ARM 24.11.451, the department will only investigate and adjudicate the most recent separation that occurred prior to the effective date of the claim, if the claim was filed on or after March 16, 2020.

(c) Regarding ARM 24.11.452A(4), because Montana Job Service offices are temporarily closed to the public, a claimant is temporarily considered to be actively seeking work as long as the claimant is registered under section (1) of this rule.

(d) Regarding ARM 24.11.453A, a claimant is temporarily excused from the work search contact requirements of this rule in order to protect the public health, safety, and welfare.

(2) The provisions of this rule do not allow a claimant to refuse:

(a) to return to work if requested by the employer and suitable work can be performed in compliance with the emergency declarations and directives; or

(b) to accept suitable work if the claimant applies and is offered work that can be performed in compliance with the emergency declarations and directives.

AUTH: 10-3-104, 39-51-302, MCA

IMP: 10-3-102, 39-51-102, MCA

4. The rationale for the temporary emergency rule is set forth in paragraph 1. This temporary emergency rule will be applied to weeks of unemployment starting the week of March 15, 2020, through the expiration of the rule or the termination of the state of emergency, whichever comes first.

5. A standard rulemaking procedure will be undertaken prior to the expiration of this temporary emergency rule.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices, and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1315 E. Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, or e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency. Please note that the above fax number and e-mail address is not to be used for asking questions about unemployment insurance claims or the application of emergency unemployment compensation rules.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

/s/ MARK CADWALLADER

Mark Cadwallader
Alternate Rule Reviewer

/s/ BRENDA NORDLUND

Brenda Nordlund, Acting Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 10, 2020.