

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

In the matter of the adoption of New Rule I pertaining to unemployment insurance benefits related to the COVID-19 pandemic) NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION)

TO: All Concerned Persons

1. On July 31, 2020, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing via remote conferencing to consider the proposed adoption of the above-stated rule. Because there currently exists a state of emergency in Montana due to the public health crisis caused by the novel coronavirus, COVID-19, there will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting, <https://mt-gov.zoom.us/meeting/96546293468>
Meeting ID: 965 4629 3468
OR

(b) Dial by telephone, +1 406 444 9999 or +1 646 558 8656,
Meeting ID: 965 4629 3468

The hearing will begin with a brief introduction by department staff to explain the use of the videoconference and telephonic platform. All participants will be muted except when it is their time to speak.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on July 24, 2020, to advise us of the nature of the accommodation that you need. Please contact Kari McManus, P.O. Box 8020, Helena, Montana 59604-8020; telephone (406) 444-4336; facsimile (406) 444-2699; Montana Relay 711; or e-mail KMcManus@mt.gov.

3. The text of the proposed New Rule provides as follows:

NEW RULE I COVID-19 CLAIMS FOR UNEMPLOYMENT INSURANCE BENEFITS FOR WEEKS OF UNEMPLOYMENT BEGINNING ON OR AFTER JULY 12, 2020

(1) For the purposes of this rule, the following definitions apply:

(a) "COVID-19" means the pandemic respiratory disease caused by coronavirus SAR-CoV-2, or mutations of that coronavirus.

(b) "COVID-19 quarantine" means that the claimant has received advice from a medical doctor or a public health authority recommending or requiring that the individual be isolated from others:

(i) for a period of up to 14 days in order to determine whether or not the individual has been exposed to the pathogens that cause COVID-19;
(ii) while the individual is infected with COVID-19; or
(iii) while the individual is subject to a "stay at home" or "shelter in place" order.

(c) "Family member" means a person residing in the same household as the claimant, including a partner or family member as defined in 45-5-206, MCA.

(2) A claimant directed by the employer to leave work or not report for work due to the employer's response to the COVID-19 pandemic, including a COVID-19 induced reduction in demand or unavailability of materials, is deemed to have been temporarily laid off by the employer.

(3) A claimant subject to a COVID-19 quarantine is deemed to be temporarily laid off by the employer during the period of the quarantine.

(4) A claimant who is a caregiver of a family member who is the subject of a COVID-19 quarantine is deemed, in order to further the public health, safety, and welfare, to also be subject to a COVID-19 quarantine.

(5) When a claimant has experienced a temporary layoff due to the COVID-19 pandemic, pursuant to (2), (3), or (4), the claimant is deemed to be able, available, and seeking suitable work when:

(a) the employer intends to recall the claimant to work at the end of the temporary layoff; and

(b) the claimant intends to return to work when recalled by the employer and takes reasonable measures to maintain contact with the employer.

(6) A claimant laid off as the result of being subject to a COVID-19 quarantine is ineligible for benefits if the claimant refuses work that can be performed while complying with the terms of the quarantine.

(7) The department shall apply its usual unemployment insurance rules in a manner that is consistent with providing unemployment benefits to employees who are laid off due to the COVID-19 pandemic through no fault or control of their own.

(8) This rule will not be applied to separations from employment arising after Executive Order 3-2020 is no longer in effect.

AUTH: 39-51-301, 39-51-302, MCA

IMP: 39-51-102, 39-51-301, 39-51-501, MCA

Statement of reasonable necessity: There is reasonable necessity to adopt New Rule I in order to establish a rule for unemployment insurance claims arising out of and during the COVID-19 pandemic. Pursuant to 2-4-303, MCA, temporary emergency rules expire within 120 days. On March 12, 2020, Governor Bullock issued Executive Order 2-2020, pertaining to a state of emergency related to the COVID-19 pandemic. On March 13, 2020, Governor Bullock issued Executive Order 3-2020, regarding the duration of the state of emergency. On March 17, 2020, the department adopted temporary emergency rules I through IV in response to the COVID-19 emergency. Although Montana is still subject to emergency and disaster declarations related to the COVID-19 pandemic, the state is presently in a phased lifting of certain public health orders and directives related to the pandemic (phased reopening). Despite the phased reopening, Montana is still subject to a continuing

threat to public health due to COVID-19, and is likely to remain under threat until the end of the declaration of emergency. Due to the uncertainty of that threat and its impact on society, the department concludes that it is reasonably necessary to adopt New Rule I. The proposed rule will allow the department to comply with recently enacted federal laws that provide for reimbursement to the state of unemployment insurance benefits for pandemic-related layoffs. Such federal laws require the department to provide flexibility in eligibility. Accordingly, the proposed rule clarifies that employees subject to quarantines or temporarily laid off by their employer due to the pandemic will be eligible for benefits. The proposed rule provides the department with the flexibility required by federal law and will allow the department to reasonably respond to the needs of Montana employees and employers. The rule further allows the program to continue to meet its core purpose by mitigating the economic effects of the COVID-19 pandemic on employment in Montana, such as they currently exist under the declaration of emergency.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Kari McManus, Unemployment Insurance Division, P.O. Box 8020, Helena, MT 59604-8020; fax (406) 444-2699; or e-mail to KMManus@mt.gov and must be received no later than 5:00 p.m., on August 7, 2020.

5. The department provides notice to interested persons that the following temporary emergency rules, adopted on March 17, 2020, at page 584 of 2020 MAR Issue Number 6, will expire by operation of law on July 15, 2020:

(TEMPORARY EMERGENCY) NEW RULE I EMERGENCY DEFINITIONS RELATED TO COVID-19 CLAIMS FOR UNEMPLOYMENT INSURANCE BENEFITS

AUTH: 10-3-104, 39-51-302, MCA
IMP: 10-3-104, 39-51-102, MCA

(TEMPORARY EMERGENCY) NEW RULE II EMERGENCY RULE RELATED TO COVID-19 CLAIMS FOR UNEMPLOYMENT INSURANCE BENEFITS

AUTH: 10-3-104, 39-51-302, MCA
IMP: 10-3-104, 39-51-102, MCA

(TEMPORARY EMERGENCY) NEW RULE III EMERGENCY RULE RELATED TO UNEMPLOYMENT INSURANCE DEADLINES ARISING DURING A DECLARED EMERGENCY OR DISASTER RELATED TO COVID-19 PANDEMIC

AUTH: 10-3-104, 39-51-302, MCA
IMP: 10-3-104, 39-51-102, MCA

(TEMPORARY EMERGENCY) NEW RULE IV REGULAR
UNEMPLOYMENT INSURANCE RULES TO BE CONSTRUED TO GIVE EFFECT
TO EMERGENCY RULES RELATED TO COVID-19 PANDEMIC

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

IMP: 10-3-104, 39-51-102, MCA

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 are not to be used for asking questions about unemployment insurance claims or the application of unemployment compensation rules.

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

8. Pursuant to 2-4-111, MCA, the department has determined that the adoption of NEW RULE I proposed in this notice will not have a significant and direct impact upon small businesses.

9. The department's Office of Administrative Hearings has been designated to preside over and conduct this hearing.

/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 June 30, 2020.