

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.11.204, 24.11.207,) PROPOSED AMENDMENT AND
24.11.441, 24.11.443, 24.11.450A,) ADOPTION
24.11.452A, 24.11.453A, 24.11.454A,)
24.11.459, 24.11.463, 24.11.469,)
24.11.471, 24.11.475, 24.11.476,)
24.11.2204, and 24.11.2511 and the)
adoption of New Rule I pertaining to)
the unemployment insurance)
program)

TO: All Concerned Persons

1. On October 14, 2016, at 10:00 am, the Department of Labor and Industry (department) will hold a public hearing in the Sanders Auditorium of the DPHHS Building at 111 North Sanders Street, Helena, Montana, 59601, to consider the proposed adoption and repeal of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Labor and Industry no later than 5:00 p.m. on October 11, 2016, to advise us of the nature of the accommodation that you need. Please contact Rachel Bawden, Department of Labor and Industry, P.O. Box 8020, Helena, Montana, 59604-8020; telephone (406) 444-2582; fax (406) 444-2993; TDD (406) 444-5549; or e-mail rbawden@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

24.11.204 DEFINITIONS ~~The terms used by the department are, in great part, In addition to the terms defined in 39-51-201 through 39-51-205, and 39-51-1121, MCA. In addition to these statutory definitions,~~ the following definitions apply to this chapter, unless context or ~~the~~ a particular rule provides otherwise:

(1) through (24) remain the same.

(25) "Job attached" means a claimant is able and available for full time work and is either:

(a) not employed but has a definite or approximate date of hire or recall to insured work at 30 or more hours per week; or

(b) employed in insured work on a part-time basis, but has a reasonable expectation that the work will become full-time.

(25) through (47) remain the same, but are renumbered (26) through (48).

(49) "Termination pay" means a payment from an employer to a claimant as the result of discharge or permanent layoff.

- (a) Examples of termination pay include:
- (i) severance pay;
 - (ii) separation pay;
 - (iii) wages in lieu of notice;
 - (iv) continuation of wages for a designated period of time following cessation of work or other similar payment; and
 - (v) payments made under an incentive, worker buy-out, or similar plan designed to produce a general or specific reduction in force by inducing workers to leave voluntarily or in lieu of involuntary termination, whether paid in a lump sum or incrementally over any period of time.
- (b) Termination pay may include payment for accrued unused vacation, sick leave, or any other leave paid at or after termination from work.
- (48) and (49) remain the same, but are renumbered (50) and (51).
- (52) "Union attached" means a claimant is:
- (a) able and available for work;
 - (b) a member in good standing of a labor union that operates an exclusive hiring hall; and
 - (c) on the out-of-work list at the hiring hall.
- (50) through (60) remain the same, but are renumbered (53) through (63).

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

IMP: 39-51-201, 39-51-401, 39-51-504, 39-51-605, 39-51-1218, Title 39, ch. 51, parts 21 through 25, MCA, 39-51-2601, 39-51-3201, 39-51-3202, 39-51-3206, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 24.11.204 to consolidate the definitions used in the rules into the existing definitions rules, while the rules are otherwise being amended, in order to streamline the substantive unemployment insurance rules.

24.11.207 INTERESTED PARTY (1) and (2) remain the same.

(3) Except as provided by 39-51-605, MCA, and ARM 24.11.208, an employer who paid wages to the claimant during the base period is an interested party to proceedings that adjudicate the claimant's separation from employment with that employer. ~~Proceedings that adjudicate the claimant's separation from employment during the base period of a claim determine whether any portion of benefits paid to a claimant are chargeable to the base period employer's account pursuant to 39-51-1125, 39-51-1212, or 39-51-1214, MCA.~~ An employer is not an interested party to proceedings that adjudicate nonseparation issues related to a claim.

(4) and (5) remain the same.

(6) Only an interested party to an unemployment insurance proceeding has standing to request a redetermination, hearing, or appeal to the Unemployment Insurance Appeals Board of Labor Appeals.

(7) remains the same.

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

IMP: 39-51-605, Title 39, chapter 51, parts 11 and 12, 21 through 24, and 32, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 24.11.207 to simplify and clarify when a base period employer is included as an interested party to a claim, in response to apparent confusion among employers regarding interested party status. There is also reasonable necessity to amend the rule to reflect the new name of the appeals board when the rule is otherwise being amended.

24.11.441 CLAIMS FOR BENEFITS (1) To request a determination of a claimant's eligibility for benefits, the claimant must file an initial claim by ~~accessing the department's internet claims application~~ using the UI4U web portal at <http://ui4u.mt.gov>, or calling the appropriate claims processing center to request filing assistance. The claimant shall ~~provide and providing~~ such information as the department may require for the proper administration of the claim. The information required from the claimant includes, but is not limited to:

(a) through (6) remain the same.

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

IMP: 39-51-2101, 39-51-2102, 39-51-2103, 39-51-2104, 39-51-2105, 39-51-2106, 39-51-2107, 39-51-2108, 39-51-2109, 39-51-2110, 39-51-2201, 39-51-2202, 39-51-2203, 39-51-2204, 39-51-2205, 39-51-2207, 39-51-2208, 39-51-2301, 39-51-2302, 39-51-2303, 39-51-2304, 39-51-2305, 39-51-2306, 39-51-2307, 39-51-2401, 39-51-2402, 39-51-2403, 39-51-2404, 39-51-2405, 39-51-2406, 39-51-2407, 39-51-2408, 39-51-2409, 39-51-2410, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 24.11.441 to have the rule conform with the "UI4U" nomenclature used by the Unemployment Insurance Division in materials now being provided to workers, and as featured on the state's web site. In addition, there is reasonable necessity to make minor wording changes to improve the clarity of the rule.

24.11.443 WEEKLY PAYMENT REQUESTS (1) After establishing a valid claim for benefits, a claimant must file timely weekly payment requests using the ~~department's internet claim system application~~ UI4U web portal, unless the ~~department determines that a claimant is unable to use the internet filing method~~ file online. In those instances, the department shall allow the claimant to file weekly payment requests by mail, e-mail, or facsimile using paper forms provided by the department. ~~Claimants~~ A claimant may elect to file payment requests each week or to file two payment requests every ~~two weeks~~ other week.

(2) ~~A claimant must file weekly~~ Weekly payment requests ~~only are timely if filed after the week has passed for which the claimant seeks benefits or waiting week credit claimed, and before midnight of the Saturday seven calendar days later.~~ only are timely if filed after the week has passed for which the claimant seeks benefits or waiting week credit claimed, and before midnight of the Saturday seven calendar days later. ~~The time frame for filing weekly payment requests begins on the Sunday following the last week for which payment or waiting week credit is requested and runs through the following seven calendar days.~~

(3) remains the same.

(4) When filing weekly payment requests using the ~~Internet claim system UI4U web portal~~, a claimant must enter the claimant's social security number, birth date, and personal identification number to access the system. The claimant's personal identification number is must be established by the claimant and ~~unknown to the department at the time of filing~~. ~~Claimants are required to keep their personal identification numbers confidential~~. The claimant must maintain the confidentiality of the claimant's personal identity number in order to protect the integrity of the claim. ~~A~~ The department considers a claimant's personal identification number is considered by the department to be the equivalent of the claimant's signature for the purpose of certifying that the claimant's responses to the department questions are true and accurate to the best of the claimant's knowledge.

(5) A claimant must report all hours of ~~insured work worked~~ or for which the claimant was paid and gross wages for ~~insured work earned~~ for each week ~~claimed for which payment is requested~~. For the purposes of this section, hours and gross wage reporting only applies to insured work. ~~The wages must be reported for the week in which they were earned rather than for the week in which they were paid, except for the following:~~

~~(a) Payments made for termination of employment in insured work must be reported for the week in which the separation from insured work occurred. Termination payments are generally known as severance pay, separation pay, termination pay, wages in lieu of notice, continuation of wages for a designated period of time following cessation of work, or other similar payment, and payments made under an incentive, worker buy-out, or similar plan designed to produce a general or specific reduction in force by inducing workers to leave voluntarily or in lieu of involuntary termination, whether paid in a lump sum or incrementally over any period of time.~~

(a) Hours worked must be reported for the week that the claimant performed work for an employer or time was credited in lieu of work performed by the claimant, such as holiday pay, or use of vacation, sick, or other paid leave, regardless of whether that use was voluntary or mandatory.

(b) Gross wages earned must be reported for the week in which the claimant worked or was credited for working in lieu of work (including holiday pay, or use of vacation, sick, or other paid leave, regardless of whether that use was voluntary or mandatory. Other types of payments from an employer must be reported as follows:

(i) Termination pay must be reported as wages for the week in which termination occurred.

~~(b)(ii) Payments for bonuses, awards, incentives, rewards, A bonus, award, incentive, reward, or profit sharing, whether in cash or in the form of securities, must be reported as wages for the week in which the payment was received issued.~~

~~(c) Holiday pay and the hours paid must be reported as wages and hours worked for the week in which the holiday occurred.~~

~~(d) Payments for accrued vacation, sick leave, or other leave paid at or after termination from work must be reported for the week in which the termination occurred.~~

~~(e)(iii) Payments for accrued Accrued unused vacation, sick leave, or other leave when without a termination from work has not occurred, commonly referred to~~

~~as a "cash-out" of accrued leave, must be reported by the claimant as wages for the week in which the payment was received issued. These payments are sometimes known as a "cash-out" of accrued leave.~~

~~(f) Payments for the use of vacation, sick leave, or other leave paid during the course of employment in insured work, including periods of temporary layoff, for time off from work, whether voluntary or mandated, must be reported for the week during which the time off from work occurred.~~

~~(g)(iv) Royalties, residual payments, and commissions When a claimant receives a royalty or residual payment, or payment for a commission, the payment must be reported as earnings for the week in which the payment was received issued. The hours must be reported for the week in which the work was performed.~~

~~(6) A claimant must file timely weekly payment requests during the pendency of a monetary determination, a non-monetary determination, or an appeal, in order to request to receive benefits or waiting period credit for that the intervening week or weeks.~~

~~(7) and (8) remain the same.~~

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

IMP: 39-51-201, Title 39, ch. 51, parts 21 through 23, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 24.11.443 to have the rule conform with the "UI4U" nomenclature used by the Unemployment Insurance Division in materials now being provided to workers, and as featured on the state's web site. In addition, there is reasonable necessity to make minor wording changes to improve the clarity of the rule. The rule is intended to reduce confusion among claimants to more clearly distinguish between reporting "hours worked" and reporting "gross wages earned."

24.11.450A NONMONETARY DETERMINATIONS AND REDETERMINATIONS (1) through (10) remain the same.

(11) An appeal of a redetermination may be filed by an interested party by submitting a request for a hearing to the ~~department~~ Office of Administrative Hearings by ~~telephone~~, fax, mail, or internet within ten days of the department mailing of the redetermination. The department shall notify the interested parties in writing of the appeal to the Office of Administrative Hearings.

(12) An appeal of the decision of the Office of Administrative Hearings may be filed by an interested party by submitting a request for the appeal to the department by ~~telephone~~, fax, mail, or internet within ten days of the department mailing of the hearing officer's decision. The department shall notify the interested parties in writing of the appeal to the Unemployment Insurance Appeals Board of Labor Appeals.

(13) remains the same.

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

IMP: 39-51-605, 39-51-2202, 39-51-2203, 39-51-2205, 39-51-2301, 39-51-2302, 39-51-2303, 39-51-2304, 39-51-2402, 39-51-2507, 39-51-2508, 39-51-2511, 39-51-2602, 39-51-3201, 39-51-3202, 39-51-3206, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 24.11.450A in order to clarify and reflect the correct name of the hearings office to which appeals are directed, and to reflect the recent change of name of the appeals board. In addition, there is reasonable necessity to remove the telephone option in order to avoid disputes where a party asserts (but cannot document) that a formal hearing or appeal was timely requested.

24.11.452A ELIGIBILITY FOR BENEFITS (1) The department shall use the following criteria to determine whether a claimant is able, available, and actively seeking full-time or part-time work:

~~(a) when the majority of claimant's work weeks in the base period of the claim were full-time work, claimant must be able, available, and actively seeking suitable full-time work to be eligible for benefits, pursuant to 39-51-2104, MCA; or~~

~~(b) when the majority of claimant's work weeks in the base period of the claim were part-time work, the department may authorize claimant to be eligible for benefits, pursuant to 39-51-2115, MCA. To remain eligible, claimant must be able, available, and actively seeking suitable part-time work for at least the number of hours per week authorized by the department.~~

~~(2) The department shall determine a claimant to be able to work when the A claimant is reasonably fitted by experience, education, or training to able to work when the claimant can perform a substantial amount of suitable work in the claimant's labor market area. For the purposes of this rule, a "substantial amount" of suitable work means full-time work, except when the department authorizes a claimant to part-time work in the following circumstances unless:~~

~~(a) the department authorized claimant for part-time work the majority of the claimant's work weeks in the claim base period were part-time, in which case an amount less than full-time is authorized by the department pursuant to 39-51-2115, MCA;~~

~~(b) the claimant has a physical or mental disability and claimant has submitted to the department an individualized determination of assessment of a physical or mental disability from a licensed and practicing health care provider, certified and signed by the provider, of appropriate, less than full-time work hours, as certified and signed by a health care provider. A claimant with a certified disability may seek a reasonable modification to this rule for the claimant; or~~

~~(c) the department determines that has determined that part-time work is the only suitable work for the claimant in the claimant's labor market area is part-time work.~~

(3) remains the same.

(4) The department shall determine a claimant to be actively seeking work when the claimant is:

~~(a) making an active, good faith effort to secure insured work during each week for which the claimant requests payment of benefits or waiting week credit, unless the claimant is exempt from this requirement pursuant to ARM 24.11.453A;~~

~~(b) "union attached," meaning that the claimant is a member in good standing and on the out-of-work list of a labor union that operates an exclusive hiring hall; or~~

~~(c) "job attached," meaning that the claimant is able and available for full-time work and:~~

~~(i) claimant is not employed but has a definite or approximate date of hire or recall to insured work at 30 or more hours per week; or~~

~~(ii) claimant is employed in insured work on a less than full-time basis, but has a reasonable expectation that the work will become full-time.~~

(5) The department shall determine a claimant to be ineligible for benefits when, without good cause, the claimant:

(a) fails to participate in a scheduled job interview;

(b) fails to provide information requested by the department for the proper administration of the claim within eight days of the date of a mailed, faxed, or telephoned, or electronic request;

(c) fails to provide the department with updated contact information within three days of a change to claimant's mailing address. Claimants are urged to also provide the department with updated telephone number(s), e-mail address and, if applicable, fax number. The department shall reinstate a claimant's eligibility for benefits upon department receipt of the updated mailing address; or

~~(d) withdraws temporarily or permanently from the labor market. Withdrawal from the labor market includes but is not limited to, temporarily or permanently, because of, among other reasons:~~

~~(i) a self-imposed limitation, such as an unrealistic wage or hour restriction or refusal to travel, that curtails claimant's ability to seek or accept suitable work;~~

~~(ii) a temporarily disabling health condition that prevents claimant from being able to perform suitable work;~~

~~(iii) an employer-approved leave of absence, per ARM 24.11.490; or~~

~~(iv) claimant's residence in or travel to the claimant is residing in, or is traveling to or in a foreign country, which is defined as, for the purposes of this rule, means any country other than the United States of America, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, or Canada; or~~

~~(v) failure by claimant to actively seek or accept suitable work due to family care-giving obligations, vacation, incarceration, lack of transportation, or any other reason.~~

(6) The department may determine a claimant to be ineligible for benefits when, without good cause, the claimant failed to provide the department with updated contact information within three days of a change to the claimant's mailing address. Upon receipt of the updated mailing address, the claimant's eligibility must be reinstated by the department.

(6) remains the same, but is renumbered (7).

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

IMP: 39-51-504, 39-51-2101, 39-51-2104, 39-51-2115, 39-51-2304, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 24.11.452A in order to simplify the rule and improve its clarity. Two definitions in the rule are being deleted and placed in the "definitions" rule, ARM 24.11.204. There also is reasonable necessity to clarify that a claimant must timely provide updated contact information or the claimant will become ineligible for benefits, but that the ineligibility will be removed as soon as the department gets the updated information.

24.11.453A WORK SEARCH CONTACTS (1) The department shall determine a claimant is making an active, good faith effort to secure insured work when the ~~claimant documents at least one valid work search contact made during the week for which claimant requests the reports at least one valid work search during the week for which~~ payment of benefits or waiting week credit is requested.

(2) A valid work search contact requires a claimant to:

(a) through (d) remain the same.

(e) make a work search contact with a different employer, or if for the same employer, for a different position, for each consecutive week.

~~(2) Seeking self-employment or work as an independent contractor does not constitute a valid work search for unemployment insurance purposes.~~

(3) A valid work search does not include:

(a) seeking self-employment;

(b) working as an independent contractor;

(c) inquiring about work at a temporary agency; or

(d) reporting part-time work.

~~(3)(4) The claimant must maintain a separate log of valid work search contacts and accurately shall~~ report at least one work search contact to the department in the designated section of the claimant's weekly payment request form, whether filing online, by mail, e-mail, or facsimile, or using the Internet claim system. Failure to provide a verifiable valid work search contact for a week or failure to answer fully all questions related to a work search contact may result in the denial of benefits.

~~(4) Claimants must retain separate documentation of all work search contacts for three calendar years following claimants' benefit year.~~

(5) Documentation of The claimant shall retain all work search contacts consists of the following information contact information necessary for verification by the department. The department may request the following work search contact information for the claimant's benefit year:

(a) through (h) remain the same.

(6) The department may exempt a claimant from the requirement to complete work search contacts and maintain a retain work search log documentation when the claimant is:

(a) job attached;

(b) union attached; or

~~(a)(c)~~ engaged in state-approved training, pursuant to ARM 24.11.475 or 24.11.476;

~~(b) "union attached" as defined in ARM 24.11.452A; or~~

~~(c) "job attached" as defined in ARM 24.11.452A.~~

(7) remains the same.

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

IMP: 39-51-2104, 39-41-2115, 39-51-2304, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 24.11.453A in order to simplify the rule and improve its clarity, and eliminate cross-references that will no longer be correct. There is reasonable necessity to clarify that

certain activities do not qualify as valid work searches, so that claimants know what activities are valid.

24.11.454A LEAVING OR DISCHARGE FROM WORK (1) and (2) remain the same.

(3) Following a worker's notice of intent to leave work, the department shall impute the reason for the separation in the following manner:

(a) ~~when~~ If a worker's notice of intent to leave work is valid, the department shall consider the worker to have left work voluntarily, ~~even if the employer terminates the worker prior to the worker's intended last day as~~ of the date identified by the valid notice;

(i) If the employer requires the worker to leave work prior to the worker's intended last day, the worker may qualify for benefits of limited duration, not to exceed four weeks.

(ii) The benefits of limited duration terminate on the date identified in the worker's valid notice, unless the worker shows good cause for leaving work, pursuant to 39-51-2302, MCA.

(iii) Benefits of limited duration occurring at the beginning of a claim will be charged against an employer's account if the employer is a base period employer.

(iv) Benefits of limited duration will not be granted if the employer ended the employment relationship prior to the worker's intended last day due to misconduct committed by the worker after notice was given.

(b) ~~when~~ If a worker attempts to retract a valid notice of intent to leave work and the employer does not accept the retraction, the department shall consider the worker to have voluntarily left work; ~~or~~.

(c) ~~when~~ If a worker's notice of intent to leave work was not valid, the department shall consider the worker to have been discharged by the employer.

(4) and (5) remain the same.

(6) ~~The department shall impute the reason for separation from work of limited duration in the following manner:~~

~~(a) when~~ When a worker agrees to accept employment of limited duration as specified by the employer or by a written employment contract, the department shall consider the worker to have been laid off due to a lack of work at the end of the duration agreed upon and the last day worked; ~~or~~.

~~(b)(7) when~~ When an employer agrees to employ a worker for a limited duration as specified by the worker or by a written employment contract, the department shall consider the worker to have voluntarily left work only when the worker has refused an offer by the employer to continue the same work beyond the limited duration. In the absence of a valid offer by the employer to continue the same work, the department shall consider the worker to have been laid off due to a lack of work on the last day worked.

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

IMP: 39-51-2302, 39-51-2303, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 24.11.454A in order to clarify and simplify the rule as part of the overall changes being

proposed in these rules. The present language of the rule appears to be confusing to claimants and employers, based on the frequency of issues raised during the claims process. In addition, there is reasonable necessity to amend the rule with respect to benefits of limited duration, in order to avoid an overpayment of benefits attributable to a period of unemployment not due to the worker's fault.

24.11.459 ADMINISTRATIVE PENALTY (1) When the department obtains information that leads the department to believe that a claimant, or the claimant's agent, made a false statement or representation, or failed to disclose a material fact in order to obtain or increase benefits, the department shall: conducts an investigation and sends the claimant a notice detailing the information obtained during the investigation. The notice provides the claimant ten days in which to respond to the information. If, after the claimant's response is received or the allotted time for response, including any extension of time granted by the department for good cause, has expired, the department determines that the claimant made a false statement or representation or failed to disclose a material fact in order to obtain or increase benefits, irrespective of whether or not benefits were obtained or increased as the result of the false statement or representation or failure to disclose a material fact, the claimant is sent written notification of that determination and of the number of weeks of disqualification, if any, imposed pursuant to 39-51-3201(1)(a), MCA. The claimant may appeal the determination either as to the finding that the claimant made a false statement or representation or failed to disclose a material fact in order to obtain or increase benefits or as to the number of weeks of disqualification imposed, or both.

(a) conduct an investigation;

(b) provide notice to the claimant regarding the information obtained during the investigation;

(c) provide the claimant eight days' time to respond to the information;

(d) issue a determination whether or not benefits were obtained or increased as the result of the false statement or representation, or failure to disclose a material fact;

(e) send written notification of that determination and of the number of weeks of disqualification, if any, imposed pursuant to 39-51-3201, MCA; and

(f) provide appeal rights. The claimant may appeal the determination as to:

(i) the finding that the claimant made a false statement or representation, or failed to disclose a material fact;

(ii) the number of weeks of disqualification imposed; or

(iii) both.

(2) The department shall apply the following when analyzing whether a false statement or misrepresentation was made:

(2)(a) A claimant will be determined to have made a false statement or representation knowing it to be false in order to obtain or increase benefits only upon a finding supported by a preponderance of the evidence that:

(i) the claimant, or the claimant's agent, personally made the statement or representation in question;

(ii) the claimant, or the claimant's agent, knew or should have known that the statement or representation was false; and

(iii) the statement or representation was made in connection with the claimant's claim for benefits and was material to a determination of the claimant's benefit entitlement.

(b) remains the same.

(3) The department shall apply the following when analyzing whether there was a failure to disclose a material fact:

~~(3)~~(a) A claimant will be determined to have knowingly failed to disclose a material fact in order to obtain or increase benefits only upon a finding supported by a preponderance of the evidence that:

(i) the claimant, or the claimant's agent, had knowledge of or should have had knowledge of the fact in question;

(ii) the fact in question was material to a determination of the claimant's benefit entitlement;

(iii) the claimant, or the claimant's agent, failed to disclose the fact in question; and

(iv) the claimant, or the claimant's agent, knew or should have known that the fact in question was required to be disclosed to the department for the proper administration of the claim.

(b) through (5) remain the same.

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

IMP: 39-51-3201, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 24.11.459 in order to improve clarity by earmarking (1) of the rule, and to place claimants on clear notice that acts of the claimant's agent are attributable to the claimant, as part of the department's efforts to minimize improper benefit payments and reduce the number of overpayments made.

24.11.463 LIE DETECTOR TESTS--DRUG AND ALCOHOL TESTING

(1) and (2) remain the same.

(3) For the purposes of the Workforce Drug and Alcohol Testing Act, an unemployment insurance benefits hearing is a legal action in which the results of a drug or alcohol test may be introduced, provided that the results and testimony about the results are protected from public disclosure.

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

IMP: 39-51-2302, 39-51-2303, 39-51-2304, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 24.11.463 to clarify, in response to several recent claims, that unemployment insurance benefits hearings are legal proceedings in which workplace drug and alcohol test results may be discussed in the context of disputed claims, so long as those references are protected from public disclosure. The rule change is necessary to address legal questions that have recently been raised in the context of unemployment insurance benefit claims, where the results of drug or alcohol testing are germane to the issue of separation for work.

24.11.469 DOMESTIC VIOLENCE DISQUALIFICATION INELIGIBILITY -- REQUALIFICATION (1) A claimant ~~who is determined to be held~~ ineligible for benefits under 39-51-2111, MCA, may requalify for benefits by reason of remaining in, or returning to, an immediately leaving the abusive situation, ~~will be disqualified under 39-51-2302, MCA.~~

(2) A claimant ~~may re-qualify for benefits under 39-51-2302(3), MCA, by immediately and permanently leaving the abusive situation.~~ The department may accept information from the claimant or other agencies, such as law enforcement or domestic violence shelters, documenting that the claimant has left the abusive situation. Documentation may include any of the following:

(a) through (d) remain the same.

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

IMP: 39-51-2111, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 24.11.469 in order to simplify the text of the rule, while similar rules are otherwise being amended.

24.11.471 REEMPLOYMENT ELIGIBILITY REVIEW PROGRAM PROGRAMS

(1) A program ~~has been established by the department to review a claimant's eligibility to receive benefits and to evaluate the claimant's need for reemployment services. The purpose of the program is to review the work search contacts made by the claimant and to help the claimant become reemployed. The department has established reemployment assistance programs to help individuals return to work. The programs review a claimant's eligibility and provide reemployment services. Any claimant may be selected to participate in the program one of these programs. Upon selection, the department will send a claimant written notice to report for an appointment at a designated job service office.~~

(2) A claimant ~~who is selected to participate in the program receives a written notice to report for an interview at the designated job service office. Failure to~~ A claimant may be denied benefits if the claimant fails to:

(a) report to the job service office at the scheduled time;₁

(b) failure to notify the office and reschedule the interview;₁ or

(c) failure to provide documentation of work search contacts, as required by ARM 24.11.453A, may result in denial of benefits comply with appointment requirements.

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

IMP: 39-51-2104, 39-51-2304, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 24.11.471 in order to better explain how reemployment services are available to claimants, and to clarify that a claimant must appear at reemployment services appointments in order to maintain benefit eligibility.

24.11.475 APPROVAL OF TRAINING BY THE DEPARTMENT

(1) through (2)(c) remain the same.

(d) job training programs authorized under the Workforce Investment Act of 1998 Innovation and Opportunity Act;

(e) through (7) remain the same.

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

IMP: 39-51-2116, 39-51-2307, 39-51-2401, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 24.11.475 to update the reference that identified certain federal legislation that provides job training programs.

24.11.476 ADDITIONAL TRAINING BENEFITS (1) through (3) remain the same.

(4) To qualify for additional training benefits, claimant must be enrolled in a state-approved training program prior to the end of the benefit year ~~established by the claimant's valid unemployment claim, as defined in ARM 24.11.440, as defined in 39-51-203, MCA~~. After the department approves claimant's additional training application, claimant may be considered "in training" for up to 30 days before the start of actual training.

(5) through (8) remain the same.

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

IMP: 39-51-2116, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 24.11.476 to replace a reference to an obsolete rule with the current statutory citation.

24.11.2204 RATES FOR NEW EMPLOYERS ~~(1) The rates in this rule are applicable beginning January 1, 2003.~~

(2) through (6) remain the same, but are renumbered (1) through (5).

AUTH: 39-8-201, 39-51-302, MCA

IMP: 39-8-207, 39-51-1101, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 24.11.2204 to remove an obsolete effective date at the same time other related rules are being amended.

24.11.2511 PAYMENTS THAT ARE NOT WAGES--EMPLOYEE EXPENSES

(1) Payments made ~~by an employer to an employee~~ to reimburse ~~the an~~ employee for ordinary and necessary business expenses incurred during the course and scope of employment are not wages if ~~all of the following are met~~ the reimbursement amount:

(a) ~~the amount of each employee's reimbursement~~ is entered separately in the employer's records;

~~(b) the employer has documentation that the employee incurred the expenses in conducting business for the employer;~~

~~(c) the reimbursement is not deducted from or based on a percentage of the employee's wage; and~~

~~(d)(c) the reimbursement does not replace the customary wage for the occupation; and.~~

~~(e)(2) the reimbursement may~~ Reimbursement must be based on any of the following that apply:

~~(i)(a)~~ actual expenses for lodging, goods, or services incurred by the employee and supported by receipts;

~~(ii)(b)~~ a flat rate for meals and lodging, ~~no greater than the amount allowed to employees of the state of Montana under 2-18-501, MCA, not exceeding the per diem allowed by the United States Internal Revenue Service for the year, unless, through documentation, the employer can substantiate a higher rate;~~

~~(iii) for drivers employed by a motor carrier with intrastate operating authority, meal and lodging expenses may be reimbursed by either of the methods provided in (1)(e)(i) or (ii) for each calendar day the driver is on travel status;~~

~~(iv) for drivers employed by a motor carrier with interstate operating authority, meal and lodging expenses may be reimbursed by the methods provided in (1)(e)(i) or (ii), or by a flat rate not to exceed the average of in-state and out-of-state meal allowances plus nonreceipted lodging under 2-18-501, MCA, for each calendar day the driver is on travel status; or~~

~~(v)(c) for~~ when an employee-furnished vehicle is used, a mileage, at a rate no greater than that allowed by the United States Internal Revenue Service for that year; provided that the individual actually furnishes the vehicle.

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

IMP: 39-51-201, 39-51-1103, MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 24.11.2511 in order to simplify the wording of the rule, and to bring the rule more closely into alignment with federal tax rules, in order to improve the ease of correctly reporting wages for unemployment insurance contributions (taxes).

4. The department proposes to adopt the following new rule:

NEW RULE I OFFER IN COMPROMISE (1) When a claimant offers to compromise an overpayment debt by making a lump-sum payment of over 50% of the amount due, the department will accept or reject the offer based on the circumstances or reason for the overpayment, the overpayment balance, and how long it would take to recover the debt with just monthly payments.

(2) The department's determination to accept or reject an offer in compromise is final and not subject to further review or appeal. This does not preclude a claimant from presenting, or the department considering, another offer in compromise that is substantially different from a prior rejected offer.

(3) Upon acceptance of an offer in compromise, the department will suspend collection efforts on the overpayment and send the claimant an agreement outlining

the terms of the compromise and the statutory condition upon which forgiveness of the remainder of the overpayment debt is dependent. The claimant must sign the agreement and return it to the department within 10 days.

(4) The claimant must make the lump-sum payment to the department in full, either by money order or cashier's check, within 60 days of signing the agreement. The department may extend this period for up to 30 days for good cause. If the lump-sum payment is not received by the due date, the compromise agreement is null and void and the department will resume its collection efforts immediately.

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

IMP: 39-51-3206, MCA

REASONABLE NECESSITY: There is reasonable necessity to adopt New Rule I in order to implement recent amendments to 39-51-3206, MCA, added by Chap. 81, Laws of 2015 (SB 85). The proposed rule outlines the department's process and terms for entering into a compromise lump-sum payment agreement with a claimant who owes on a benefit overpayment.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Rachel Bawden, Program Analyst Supervisor, Department of Labor and Industry, P.O. Box 8020, Helena, Montana, 59604-8020; fax (406) 444-2993; or e-mail rbawden@mt.gov, and must be received no later than 5:00 p.m., October 24, 2016.

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

7. 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. Locky Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply to the proposed amendments. The bill sponsor contact requirements of 2-4-302, MCA, do apply to New Rule I, and have been complied with. Senator Ed Buttrey was contacted via e-mail on August 10, 2016.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and adoption of the above-referenced rules will not significantly and directly impact small businesses.

11. The department proposes to make the amendments and new rule effective November 11, 2016. The department reserves the right to make some or all the changes effective on a different date, or not to adopt some or any of the proposed amendments or new rule.

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

/s/ PAM BUCY
Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State September 12, 2016