

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

In the matter of the adoption of NEW) NOTICE OF PUBLIC HEARING ON
RULE I, pertaining to the value of) PROPOSED ADOPTION
housing furnished by an employer for)
workers' compensation purposes)

TO: All Concerned Persons

1. On January 12, 2018, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing in the basement auditorium of the Sanders Building (DPHHS), 111 North Sanders, Helena, Montana, to consider the proposed adoption of the above-stated rule.

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 January 8, 2018, to advise us of the nature of the accommodation that you need. Please contact the Department of Labor and Industry, Attn: Jason Swant, Employment Relations Division, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-6451; fax (406) 444-4140; Montana TTD (406) 444-5549; or e-mail JSwant@mt.gov.

3. The proposed new rule is as follows:

NEW RULE I VALUE OF EMPLOYER-FURNISHED HOUSING (1) For the purposes of this rule, the following definitions apply:

(a) "Agricultural employer" means an employer whose operations are assigned to an agricultural classification code for workers' compensation purposes. The term is intended to be consistent with the definition of agriculture provided by 15-1-101, MCA.

(b) "Bedroom" means a room in a dwelling that is primarily used for sleeping.

(c) "Dwelling" means a building equipped for human habitation.

(d) "Zero bedrooms" means a dwelling that is an efficiency, dormitory, or a bunkhouse.

(2) For the purposes of calculating wages pursuant to 39-71-123, MCA, the monthly fair rental value, in U.S. dollars, for housing is established for each county in Montana as specified in the publication entitled "Montana Workers Compensation Housing, Rent or Lodging Monthly Rates."

(a) The publication is available online via the department's website, <http://erd.dli.mt.gov>.

(b) A printed copy of the publication is available to the public at no cost, upon request to the department's employment relations division.

(3) In recognition of Montana's rural nature and expansive landscape, and the fact that housing supplied by an agricultural employer is likely to be remotely situated and distant from communities with an established rental housing market,

housing furnished by an agricultural employer is discounted by 50% of the fair rental value for housing established in (2) of this rule, for the county in which the dwelling is located.

(4) If an individual is not currently using the room for sleeping, it is not considered a bedroom for the purpose of this rule.

(5) The provisions of this rule apply to housing furnished any worker.

AUTH: 39-71-203, MCA

IMP: 39-71-123, MCA

REASONABLE NECESSITY: There is reasonable necessity to adopt a rule to implement the provisions of Chap. 339, L. of 2017 (House Bill 449), so as to provide insurers, employers, and employees with reasonable certainty of the value (for workers' compensation insurance purposes) of housing furnished by the employer to an employee.

The department considered a variety of approaches to creating the rule, including setting values based on rental rates in the nearest community in which there is significant retail shopping, discounted by a mileage factor, based on the distance from the housing location to that community. A discount factor based on the number of miles of paved roads, and another discount factor based on the number of unpaved roads was considered. The actual mileage approach was rejected as being too complicated, requiring too much effort to calculate, and more likely to lead to factual disputes regarding the route selected. A similar approach regarding mileage to the county seat was also rejected for the same reasons.

The department selected the fair market rental rates used for Section 8 housing allowances for each county in Montana, which are set based by surveys by the U.S. Department of Housing and Urban Development for dwellings of various sizes, as an objective rental rate for housing in the county where the dwelling is located. The bill was brought by the sponsor to address the specific concerns of rural agricultural employers. In recognition of the rural nature of Montana's agricultural employers, and the increased likelihood of such employers having operations a long way from the county seat, the department has proposed an agricultural discount. Use of a single discount rate allows for simple calculation of the value which all parties can readily determine.

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: the Department of Labor and Industry, Attn: Jason Swant, Employment Relations Division, P.O. Box 8011, Helena, MT 59604-8011; or e-mail JSwant@mt.gov, and must be received no later than 5:00 p.m., January 19, 2018.

5. An electronic copy of this notice of public hearing is available through the department's web site at <http://dli.mt.gov/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings Section. The department strives to make the electronic copy of this notice of public hearing conform to the official version of the

notice, as published 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 department strives 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, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

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 that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program or areas of law the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1315 E. Lockett 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.

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and were fulfilled on July 17, 2017, via telephone.

8. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rule may significantly and directly impact small businesses.

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

/s/ Mark Cadwallader
Mark Cadwallader
Alternate Rule Reviewer

/s/ Galen Hollenbaugh
Galen Hollenbaugh, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State December 11, 2017.