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DEPARTMENT OF LABOR AND INDUSTRY

NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2025-29.1

Summary

Unemployment Insurance - Definitions - Claim Appeal Dates - Redetermination Requests - General Rule Clarification - Implementation of House Bill 652, 2023 Montana Legislature, Chapter 731

Hearing Date and Time

Friday, May 30, 2025, at 1:00 p.m.

Virtual Hearing Information

A public hearing will be held via remote conferencing to consider the proposed changes to the rules listed in this notice. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

Join Zoom Meeting: <https://mt-gov.zoom.us/j/86755755076>

Meeting ID: 867 5575 5076; Password: 002136

Dial by Telephone: +1 646 558 8656

Meeting ID: 867 5575 5076; Password: 002136

Comments

Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728, Helena, Montana 59624. Comments must be received by Friday, June 6, 2025, at 5:00 p.m.

Accommodations

The agency 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. Requests must be made by Friday, May 23, 2025, at 5:00 p.m.

Contact

Department of Labor and Industry
(406) 444-5466
laborlegal@mt.gov
Montana Relay: 711

Rulemaking Actions

AMEND

The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

24.40.101 DEFINITIONS

In addition to the terms defined in Title 39, chapter 51, MCA, including in 39-51-201 through 39-51-205, and 39-51-1121, MCA, the following definitions apply to this chapter, unless context or a particular rule provides otherwise:

- (1) "Accredited by the state of Montana" means the educational institution meets the applicable accreditation standards defined in Title 20, MCA, for institutions in the state of Montana, and the standards defined by the U.S. Department of Education for institutions outside the state of Montana.
- (2) "Additional claim" means a claimant reactivated a claim during the claim's benefit year according to ARM 24.40.841, after one or more separations from insured employment since the claim went inactive.
- (3) "Available for work" means a claimant is willing and able to accept an offer of suitable work for a minimum of three days a week, and the work days are typical of the claimant's occupation.
- ~~(3)~~(4) "Base period employer" means an employer from whom a claimant earned wages for insured employment during the base period of the claim.

~~(4)~~(5) "Benefit determination" means a decision involving any issue related to a claimant's qualification or eligibility for benefits, including monetary, nonmonetary, and separation issues. The term also includes a claimant's overpayment amount and determinations regarding waiver of overpayment recovery.

~~(5)~~(6) "Calendar quarter" means any one of the following quarters in a year:

First - January, February, March

Second - April, May, June

Third - July, August, September

Fourth - October, November, December

~~(6)~~(7) "Child" as used in 39-51-2111, MCA, means an individual under the age of 18, including an emancipated minor, or an adult with a disability who is dependent upon parent(s) or guardian(s) for food, shelter, living expenses, and other necessities.

~~(7)~~(8) "Claim," as used in this chapter and in Title 39, chapter 51, MCA, unless the context or language clearly indicates otherwise, means an initial, additional, or reopened claim for unemployment insurance benefits.

~~(8)~~(9) "Claimant" means a person who has filed a claim, or who is in the process of filing a claim.

~~(9)~~(10) "Days" means a specified number of consecutive calendar days, including Saturdays, Sundays, and holidays except as provided in ARM 24.40.105.

~~(10)~~(11) "Discharge," as used in 39-51-2303, MCA, means a termination of the employment relationship between an employer and ~~a~~ an employee initiated by the employer, for reasons other than a lack of work, whether or not in response to some act or omission on the part of the employee.

~~(11)~~(12) "Educational institution," as used in 39-51-2108, 39-51-2302, and 39-51-2307, MCA, means any public, private, or nonprofit academic, vocational, technical, business, professional, or other school (including a home school), college, or university.

(13) "Full-time work" means insured employment in which an employee is regularly scheduled to work 40 or more hours per week.

~~(12)~~(14) "Good cause" means reasonably compelling circumstances which did not result from any act or omission on the part of the person or business entity claiming good cause and which could not be overcome by reasonable diligence.

~~(13)~~(15) "Inactive claim" means a claimant did not file a request for benefit payments for four consecutive weeks during the claim's benefit year. In order to begin claiming

benefits again when a claim goes inactive, a claimant must follow the procedures pursuant to ARM 24.40.841.

~~(14)~~(16) "Initial claim" means a request filed by a claimant for a determination of the claimant's potential entitlement to and eligibility for benefits.

~~(15)~~(17) "Insured employment" means employment, as defined in 39-51-203, MCA, including federal civilian service, federal military service, and services that constitute employment in any other state, but does not include those services enumerated in 39-51-204, MCA.

~~(16)~~(18) "Issue" means any act, circumstance, or condition, occurring or existing before or during a claimant's benefit period, that has the potential to disqualify or make a claimant ineligible for benefits or to reduce the amount of benefits payable to a claimant. An issue includes both monetary and nonmonetary factors affecting benefit eligibility.

~~(17)~~(19) "Job attached" means a claimant is able and available and has a definite or approximate date of hire or recall to insured employment at 30 or more hours per week.

~~(18)~~(20) "Labor market area" means an economically integrated geographic area within which individuals can reside and find work within a reasonable distance or can readily change jobs without changing their place of residence.

~~(19)~~(21) "Leave of absence" means a cessation of employment due to reasons other than an on-the-job injury, requested by the employee and approved by the employer, with an understanding the employee will be returning to employment for the employer.

~~(20)~~(22) "Leaving work," as used in 39-51-2302, MCA, includes the term "leaving employment," and means:

- (a) any permanent, long-term, or indefinite voluntary reduction in an employee's hours of insured regularly scheduled employment of 40 or more hours per week for a particular employer initiated by the employee, whether or not the reduction occurs in response to an act or omission of the employer or is approved by the employer; or
- (b) a cessation of employment initiated by the employee, which resulted from the employee's absence from work without an employer-approved leave of absence for:
 - (i) five or more consecutive work days due to a physical or mental condition, which prevented the employee from performing the essential functions of the job; or
 - (ii) three or more consecutive work days without the employer's permission for any other reason.

- ~~(21)~~(23) "Long-term" means that the circumstance in question will or may reasonably be expected to continue to exist substantially unchanged for a period of time exceeding six consecutive weeks.
- ~~(22)~~(24) "Offset" means the withholding of benefits that would otherwise be payable to a claimant for a compensable week of unemployment in order for the department to recover an overpayment.
- ~~(23)~~(25) "Online portal" means the department's public-facing online system for administration of the unemployment insurance program.
- ~~(24)~~(26) "Overpayment" means the amount of benefits paid to a claimant from a state or federal unemployment compensation fund that the a state subsequently determines the claimant was not entitled to receive because of disqualification, ineligibility, or reduction in entitlement under that state's law.
- (27) "Part-time availability" pursuant to 39-51-2115, MCA, means a claimant is qualified to seek only part-time insured work and maintain benefits if:
- (a) the majority of the claimant's work weeks in the base period were part-time;
or
 - (b) the claimant has a medical diagnosis signed and certified from a licensed and practicing healthcare provider that limits the claimant's ability to perform full-time work.
- ~~(25)~~(28) "Part-time employment" means insured employment in which an employee is regularly scheduled to work less than 40 hours per week.
- ~~(26)~~(29) "Pension" means pension payments, retirement benefits, retirement pay, annuity, or similar periodic payment made to an individual based on previous employment. This definition does not include payments from a fund to which the individual was required to make a direct contribution.
- ~~(27)~~(30) "Permanent layoff" means an indefinite termination of the employment relationship between an employer and an employee initiated by the employer due only to a lack of work for the employee to perform.
- ~~(28)~~(31) "Reactivated claim" means a claimant did not file a request for benefits for at least four consecutive weeks, and before the end of the benefit year the claimant contacted the department to begin requesting benefits again according to ARM 24.40.841.
- ~~(29)~~(32) "Recently lived" as used in 39-51-2111, MCA, means having lived with the abusive person for a period of time during the 12-month period immediately preceding the date the claimant left insured employment or was discharged from insured employment due to domestic violence or domestic abuse.

- ~~(30)~~(33) "Reopened claim" means a claimant reactivated a claim during the claim's benefit year according to ARM 24.40.841 when there were no separations from insured employment since the claim went inactive.
- ~~(31)~~(34) "Same work" means an offer by an individual's present employer of the same hours, wages, terms of employment, and working conditions.
- ~~(32)~~(35) "Separation" means any reduction in an employee's hours of insured employment for a particular employer.
- ~~(33)~~(36) "Similar work" means work in the same occupation or a different occupation that requires essentially the same skills and knowledge as the worker's current or most recent employment but does not mean identical work.
- ~~(34)~~(37) "State-approved training program" means a program the department determines is reasonably expected to lead to employment for a claimant and meets the criteria outlined by ARM 24.40.903.
- ~~(35)~~(38) "Suspension" means a pause of the employment relationship between an employer and an employee initiated by the employer for disciplinary, investigative, or other reasons not including a lack of work for the employee to perform.
- ~~(36)~~(39) "Tax determination" means a decision regarding an employer's contributions, charges, reporting, or other issue determined pursuant to 39-51-1109, MCA.
- ~~(37)~~(40) "Temporary layoff" means a suspension of the employment relationship between an employer and ~~a~~ an employee initiated by the employer due only to a lack of work for the employee to perform and where the employer intends to recall the employee at such time as work becomes available, except for separations from temporary employment as defined in ARM 24.40.611.
- ~~(38)~~(41) "Termination" means either a discharge or a permanent layoff.
- ~~(39)~~(42) "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 employment or other similar payment; and
 - (v) payments made under an incentive, employee buy-out, or similar plan designed to produce a general or specific reduction in force by inducing employees 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 employment.

~~(40)~~(43) "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.

~~(41)~~(44) "Valid notice" means a formal, unconditional, specific communication between an individual employee and an employer or authorized agent of an employer, that provides notice of the date an employee intends to leave work voluntarily (quit) or notice of the date an employer intends to terminate an employee from employment.

~~(42)~~(45) "Weekly payment request" means the filing by a claimant of a request for benefit payment or waiting week credit for any week within claimant's benefit year.

(46) "Withdrawal from the labor market" means a claimant is unavailable for work for three or more days per week, unless the claimant is qualified to seek part-time employment pursuant to these rules.

~~(43)~~(47) "Work search contact" means a documented contact by a claimant with an insured employer or authorized agent that hires workers for insured work or insured employment the claimant is qualified for and able to perform, and further described by ARM ~~24~~.24.40.823.

Authorizing statute(s): 39-51-301, 39-51-302, MCA

Implementing statute(s): 39-51-201, 39-51-401, 39-51-504, 39-51-605, 39-51-1218, Title 39, chapter 51, parts 21 through 25, MCA, 39-51-2601, 39-51-3201, 39-51-3202, 39-51-3206, MCA

Reasonable Necessity Statement

The proposed definitions of "available for work" and "withdrawal from the labor market" are necessary to clarify and supplement the statutory language in 39-51-2104, MCA, for benefit eligibility requirements when work is not available to the claimant. The statute only addresses benefit eligibility requirements when work is available to a claimant: "if an individual is unavailable for work for less than 3 days within a week for which work is available, the individual must be paid the weekly benefit amount reduced by one-fifth [. . .]," 39-51-2104(2)(a), MCA, or "[i]f the individual is unavailable for work for 3 days or more, or part of

each of 3 days or more, within a week for which work is available, the individual must be considered unavailable for work for the entire week and is not eligible to receive benefits [. . .] [,]" 39-51-2104(2)(b), MCA. Therefore, the proposed definition of "available for work" is necessary because it defines benefit eligibility requirements when a claimant is available for work, but work is not available to the claimant. The term "available for work" is further clarified by defining the opposite situation, "withdrawal from the labor market." Like the proposed definition of "available for work," the proposed definition of "withdrawal from the labor market" is necessary to address benefit eligibility when the claimant places limitations on being available for work, but work is not available to the claimant.

The proposed definition of "full-time work" is necessary because the term is not defined in statute, and the proposed definition restores the definition in the prior repealed definitions rule, ARM 24.11.204(18), repealed in the 2024 Montana Administrative Register on page 1457, effective July 1, 2024. However, the law makes clear that "[a]n individual is not considered to be unemployed in any week in which the individual works at least 40 hours in employment." 39-51-2101(2), MCA. The definition of "full-time work" helps to clarify and distinguish the definition for the term "part-time work" which is referenced in statutes such as 39-51-2115, MCA, and throughout these rules.

The proposed definition of "part-time availability" pursuant to 39-51-2115, MCA, is necessary because the statute does not contain the medical exception allowing a claimant to seek part-time work and maintain benefits. The proposed definition restores the definition in the prior repealed rule, ARM 24.11.452A(2), repealed in the 2024 Montana Administrative Register on page 1457, effective July 1, 2024.

The proposed amendment to the definition of "work search contact" adding the word "insured" to describe both employers and employment is necessary because a claimant must seek work from an insured employer for a valid work search contact. As noted in ARM 24.40.823(3), seeking uninsured work, such as self-employment or work as an independent contractor, is not a valid work search contact for unemployment insurance purposes. The further amendment to the definition is necessary to correct a typo in the rule number defining "work search contact."

24.40.105 TIME AND PROCEDURE FOR FILING INFORMATION

- (1) Interested parties shall file responses to the department's requests for information and questions within eight calendar days. Interested parties shall file responses to any subsequent request for information within two business days. The department's request for information or questions shall include the interested party's specific deadline to file a response.
- (2) When a deadline falls on a Saturday, Sunday, or holiday, the filing is due the next business day. Information is filed with the department on the day it is received by the department, not the day it is sent or postmarked. This rule does not apply to

the filing of a request for redetermination under ARM 24.40.833, the filing of a request for hearing under ARM 24.40.201, or the filing of weekly payment requests under ARM 24.40.813.

- (3) Interested parties may file responses using the online portal, or by filing responses through the mail.
- (4) The department may extend the deadlines for filing information if the interested party shows good cause for the delayed filing.

Authorizing statute(s): 39-51-301, 39-51-302, MCA

Implementing statute(s): 39-51-301, 39-51-603, 39-51-605, Title 39, chapter 51, parts 11 through 13, and 21 through 24, MCA

Reasonable Necessity Statement

The proposed amendment to (2) is necessary to comply with federal requirements to identify a claimant's appeal date, meaning the date a claimant files an appeal of a department determination or redetermination. The appeal date is defined differently in ARM 24.40.833 and ARM 24.40.201 from the dates identified in this rule for filing information with the department. The necessity for this change in appeal date is further explained in the reasonable necessity statement for the proposed amendments to ARM 24.40.201 below.

24.40.201 APPEAL OF DEPARTMENT DETERMINATIONS OR REDETERMINATIONS - REQUEST FOR HEARING

- (1) An interested party may appeal a benefit determination or redetermination or tax determination or redetermination by filing a request for hearing. A request for hearing must be in writing, and it must contain the reasons for the appeal, including any information or argument not considered by the department which could affect the outcome of the appealed determination or redetermination.
- ~~(2) A request for hearing of a benefit redetermination or tax redetermination must be in writing. An interested party may file the request for hearing in person, by mail, or using the online portal as specified by the department.~~
- (2) The deadline for an interested party to file a request for hearing is within 10 days of the date of the department's determination or redetermination. If an interested party's deadline to file a request for hearing falls on a weekend or holiday, the deadline is extended to the next business day.

- (3) The day the interested party files the request for hearing with the department is the appeal date. A request for hearing is filed with the department on the day it is requested via the online portal, postmarked for mail delivery, or delivered to the department in person. If no postmark is available to determine the appeal date, the date on the request for hearing is the appeal date. If no postmark or date is available for the request for hearing, the department shall consider one day before receipt of the request for hearing as the appeal date.
- (4) The department may extend an interested party's deadline for filing a request for hearing if the interested party shows good cause for the delayed filing.

Authorizing statute(s): 39-51-301, 39-51-302, MCA

Implementing statute(s): 2-4-201, 39-51-1109, 39-51-2402, 39-51-2407, MCA

Reasonable Necessity Statement

The proposed amendments including the word "determination" in (1) are necessary because an interested party is not required to request a redetermination, and an interested party is permitted to appeal a determination directly to a hearing under 39-51-2402(3), MCA.

The repeal of (2) is necessary because the relevant information about the request for hearing being in writing is added to (1), and the information about how to file an appeal is in new (2).

New (2) is necessary to provide notice of the 10-day appeal deadline in 39-51-2402(3), MCA, and to comply with federal requirements for unemployment insurance appeal filing dates. According to the U.S. Department of Labor's (USDOL), Employment and Training Administration (ETA), "filing date" is defined as follows in ET Handbook 401:

Date Appeal Filed. Generally, this will be date on which an appeal was filed by mail or in person. State law may consider a dated postmark or dated private postal meter to be the date of filing. However, a dated postmark is frequently not available. In this case, a date on the appeal request should be used. If this is also not available, then the date one day prior to receipt by the agency may be used.

ET Handbook 401, Unemployment Insurance Reports, 4th Edition, p. V-4-254. Federal requirements further specify how to identify a request for an appeal as follows: "An appeal should be considered to have been filed as of the time of mailing or delivery to any employment security office of any written statement, signed by the appellant or his representative, indicating dissatisfaction with a determination or the party's desire for its review." ET Handbook 382, Measuring UI Lower Authority Quality, 3rd Edition, p. 9. New (2) is

further necessary because it identifies personal delivery, mail, and online as valid means for an interested party to file an appeal.

New (3) is necessary because the department may extend an appeal deadline if an interested party shows good cause for the late appeal under 39-51-2402(3), MCA.

24.40.813 WEEKLY PAYMENT REQUESTS

- (1) In order to receive benefit payments, a claimant must file weekly payment requests using the online portal. If the claimant is unable to file online, the claimant may contact the department to request and file weekly payment requests by mail.
- (2) Weekly payment requests are timely if the request is filed after the week claimed, and before midnight of the Saturday ~~seven~~ 28 calendar days later. Claimants shall file payment requests in chronological order, starting with the oldest week claimed and ending with the most-recent week claimed.
- (3) A claimant must file timely weekly payment requests during the claim adjudication and appeal process to receive benefits or waiting period credit for the intervening week or weeks.
- (4) A claimant must completely answer each question on the weekly payment request form and certify that the claimant's responses are true and accurate to the best of the claimant's knowledge.
- (5) A claimant must report all hours worked for wages from all work for each week the claimant requests benefit payments. Hours shall be reported for the week the work was performed. A claimant must also report any hours claimed for pay in lieu of work such as holiday pay, or use of vacation, sick, or other paid leave, regardless of whether the use of leave was voluntary or mandatory.
- (6) A claimant must report all gross wages earned from all work for each week the claimant requests benefit payments. Gross wages include payment or hours worked or pay in lieu of work such as holiday pay, or use of vacation, sick, or other paid leave, regardless of whether that use was voluntary or mandatory.
 - (a) Termination pay must be reported as wages for the week in which the termination occurred.
 - (b) The following payments from an employer must be reported as wages for the week in which the payment was issued:
 - (i) A bonus, award, incentive, reward, or profit sharing, whether in cash or in the form of securities;

- (ii) Accrued unused vacation, sick leave, or other leave without a termination from employment, commonly referred to as a "cash-out" of accrued leave;
 - (iii) A royalty or residual payment, or payment for a commission;
- (c) Payment is issued on the date printed on a physical check, the date of release of electronic funds transfer, or the date cash was tendered. The department may allow up to 14 calendar days for reporting discrepancies.
- (7) The department may allow a late payment request if the claimant shows good cause for the late ~~filing~~ filing. If the department determines that the claimant did not have good cause for the delay in filing, benefits or waiting week credit must be denied, and the claimant may be required to reactivate the claim as provided in ARM 24.40.841.

Authorizing statute(s): 39-51-301, 39-51-302, MCA

Implementing statute(s): 39-51-201, Title 39, chapter 51, parts 21 through 23, MCA

Reasonable Necessity Statement

The proposed amendment to (2) is necessary to allow the department and claimants a reasonable time to send and receive paper payment requests through the mail. The seven-day time limit is unrealistic for postal service throughout the state of Montana for both the sending and returning of paper payment requests. Furthermore, the department determined that the rule must include clarification for the order in which claimants shall file payment requests, whether online or through the mail. The proposed amendment to (7) is necessary to correct a grammatical error.

24.40.823 WORK SEARCH CONTACTS

- (1) A valid work search contact requires a claimant to directly contact an insured employer, or an authorized agent of an insured employer, and complete a job application or submit a resume that enables the insured employer to contact the claimant to arrange an interview or to commence insured employment. The claimant must possess the prior work experience, knowledge, skills, and abilities to qualify for the specific job opening.
- (2) A valid work search contact includes a claimant's registration for work at a temporary employment agency.

- (3) A valid work search does not include seeking self-employment, working as an independent contractor, reporting part-time work, or registering with the department's workforce services program.
- (4) A claimant shall report at least one valid work search contact with a different insured employer, or for a different position with the same insured employer, for each consecutive week that the claimant requests benefit payments.
- (5) The claimant shall retain all work search contact information necessary for verification by the department. The department may request all information relevant to the work search contact.
- (6) Claimants who are job attached or union attached may be exempt from work search contact requirements as determined by the department.

Authorizing statute(s): 39-51-301, 39-51-302, MCA

Implementing statute(s): 39-51-2104, 39-51-2115, 39-51-2304, MCA

Reasonable Necessity Statement

The proposed amendment to add the word “insured” to describe both employers and employment is necessary because a claimant must seek work from an insured employer for a valid work search contact. As noted in (3), seeking uninsured work, such as self-employment or work as an independent contractor, is not a valid work search contact for unemployment insurance purposes.

The proposed new (6) is necessary to document and give the public notice of the department’s long-standing procedure of exempting claimants who are job attached or union attached from work search contact requirements.

24.40.831 DETERMINATIONS OF BENEFIT ELIGIBILITY AND QUALIFICATION

- (1) In addition to the determination issued under ARM 24.40.809, the department shall adjudicate each issue affecting a claimant's eligibility and qualification for benefits. Issues subject to adjudication include initial eligibility issues and any issues that arise during the period of benefit payments. The department shall issue a written decision for each individual issue affecting the claimant's benefits.
- (2) When the department identifies an issue that requires adjudication, including when the information provided by the claimant and employer differs substantially

regarding claimant's eligibility for benefits, the department shall investigate and adjudicate the claim as follows:

- (a) The department shall promptly request information from the claimant, the employer, and any other sources of relevant information within eight days pursuant to ARM 24.40.105.
 - (b) The department shall allow the claimant to review and respond to the information obtained by the department and to submit any rebuttal evidence.
 - (c) If the claimant fails to provide the requested information within the time period designated by the department, the department may make an adverse ruling against the claimant, including a determination that the claimant is unavailable for work as provided in 39-51-2104, MCA.
 - (d) If the employer fails to provide information within the time period, the employer may be subject to ARM 24.40.111.
- (3) If a claimant is determined ineligible or disqualified for benefits due to an act or circumstance that occurred prior to the effective date of an initial, additional, or reopened claim, the claimant is deemed ineligible or disqualified for benefits as of the date of the act or circumstances that caused the ineligibility or disqualification.
 - (4) If a claimant is determined to have failed the requirements of benefit eligibility due to an act or circumstance that occurred during the benefit period of a prior or current claim, the claimant is deemed ineligible or disqualified for benefits as of the Sunday of the week the act or circumstance resulting in ineligibility or disqualification occurred.
 - (5) A claimant who is determined to be ineligible or disqualified for benefits may be required to pay back any benefits received after the date the claimant was determined to be ineligible or disqualified for benefits.
 - (6) The department shall provide written notice of a determination to all interested parties.
 - (7) An interested party who disagrees with a department determination on any issue may request redetermination under ARM 24.40.833, or request a hearing under ARM 24.40.201.

Authorizing statute(s): 39-51-301, 39-51-302, MCA

Implementing statute(s): 39-51-605, 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 Statement

The proposed amendment adding (7) is necessary because a claimant is not required to request a redetermination, and a claimant has the option to appeal a determination directly to a hearing under 39-51-2402(3), MCA.

The proposed amendment removing the required redetermination is intended to aid in faster and more efficient claims processing. Claimants who do not request a redetermination retain ample due process rights to challenge a department determination, including the right to request a hearing under 39-51-2403, MCA and ARM 24.40.201; the right to request an appeal to the Unemployment Insurance Appeals Board under 39-51-2404, MCA; and the right to request judicial review of the final agency decision under 39-51-2410, MCA.

24.40.833 REDETERMINATION

- (1) An interested party may request a redetermination of a department determination by submitting a request for redetermination to the department, ~~by the online portal or mail, together with any~~ The request for redetermination must include additional information the party wishes the department to consider within ten days of the service of the determination.
- (2) The deadline for an interested party to file a request for redetermination is within 10 days of the date of the department's determination. If an interested party's deadline to file a request for redetermination falls on a weekend or holiday, the deadline is extended to the next business day.
- (3) The day the interested party files the request for redetermination with the department is the appeal date. A request for redetermination is filed with the department on the day it is requested via the online portal, requested via phone, postmarked for mail delivery, or delivered to the department in person. If no postmark is available to determine the appeal date, the date on the request for redetermination is the appeal date. If no postmark or date is available for the request for redetermination, the department shall consider one day before receipt of the request for redetermination as the appeal date.
- (4) The department may extend an interested party's deadline for filing a request for redetermination if the interested party shows good cause for the delayed filing.
- ~~(2)~~(5) The department shall provide any additional relevant information to all interested parties and allow the interested parties to review, respond, and submit rebuttal evidence, if any, within eight days of the department's request for rebuttal.
- ~~(3)~~(6) The department shall provide notice of the redetermination to all interested parties.

- (7) An interested party who disagrees with the department's redetermination may file a request for hearing pursuant to ARM 24.40.201.

Authorizing statute(s): 39-51-301, 39-51-302, MCA

Implementing statute(s): 39-51-605, 39-51-2402, MCA

Reasonable Necessity Statement

The proposed amendments to (1) are necessary because an interested party is not required to request a redetermination under 39-51-2402, MCA, and removing this step will aid in more efficient claims processing, as described above in the reasonable necessity statement for ARM 24.40.831. The proposed amendments to (1) also require an interested party to submit additional information that has not been considered by the department with a request for redetermination. The requirement for additional information is designed to encourage claimants to clarify both monetary and nonmonetary claim issues with the department before the hearing process.

The proposed amendments adding new (2) are also necessary in response to the federal requirements for appeal dates, described in detail above in the reasonable necessity statement for ARM 24.40.201.

New (3) is necessary because the department may extend the deadline to request a redetermination if an interested party shows good cause for the late request under 39-51-2402(3), MCA.

New (6) is necessary to clarify that an interested party retains the right to request a hearing after completing the redetermination process.

24.40.903 APPROVAL OF TRAINING BY THE DEPARTMENT—~~ADDITIONAL TRAINING BENEFITS~~

- (1) The department shall consider the curriculum, facilities, staff, and other essentials necessary to insure that a training program has the capacity to achieve the training program's objectives, including appropriate standards and practices regarding satisfactory attendance and performance of trainees. State-approved training programs may include, but are not limited to, the following:
 - (a) job search workshops;
 - (b) vocational or technical training, including basic education required as a prerequisite to such training;

- (c) vocationally directed academic courses;
 - (d) job training programs authorized under the Workforce Innovation and Opportunity Act;
 - (e) training programs designed to upgrade claimant's skills to meet technological or other advances in the claimant's occupational field; or
 - (f) training programs designed to improve claimant's employability by enhancing claimant's aptitudes or skills for ~~a demand~~ an in-demand occupation.
- (2) The department shall consider the following criteria when determining claimant's qualification for training benefits:
- (a) claimant's basic work skills, the lack of which may be demonstrated by a history of repeated periods of unemployment;
 - (b) claimant's history of recent employment that paid federal or state minimum wage;
 - (c) claimant's lack of formal vocational training or lack of a marketable degree from an educational institution of higher learning;
 - (d) the diminished value of claimant's skills in the labor market due to changes in technology or major reductions in the industry in which claimant was employed;
 - (e) claimant's inability to work in the claimant's customary occupation due to documented, long-term physical or mental disabilities;
 - (f) claimant's reasonable expectation that training will result in higher wages and more secure employment; and
 - (g) claimant's reasonable expectation for successful completion of the training program, as demonstrated by:
 - (i) claimant's interest in and aptitude for the course of study to be pursued; and
 - (ii) claimant's willingness to commit sufficient time to ensure completion of the training.
- (3) For up to 30 days prior to the start of a state-approved training program, the department shall consider a claimant to be in training after the department approves the training application, even though training may not have started.
- (4) Upon the department's written approval of a claimant for a state-approved training program, the department shall notify the claimant of the availability of additional training benefits.

- (5) A claimant in good standing in a state-approved training program may apply to the department for additional training benefits.
 - (a) Additional training benefits may be paid during break periods of less than 30 days, and weeks including at least one day of training.
 - (b) Additional training benefits may not exceed an amount equal to ~~26~~ 24 times the claimant's regular weekly benefit amount.
 - (c) Additional training benefits terminate when the following occurs:
 - (i) the claimant completes the training program;
 - (ii) the claimant exhausts the maximum additional training benefits payable;
 - (iii) the claimant leaves or is expelled from the training program; or
 - (iv) the claimant becomes eligible to file a new, regular unemployment benefits claim at the end of the benefit year.
- (6) The department shall not charge an experience-rated employer's account, as defined by 39-51-1214, MCA, for benefits paid to a claimant who is qualified to receive benefits under this rule.

Authorizing statute(s): 39-51-301, 39-51-302, MCA

Implementing statute(s): 39-51-2116, 39-51-2307, 39-51-2401, MCA

Reasonable Necessity Statement

The proposed amendment to the rule catchphrase is necessary to avoid confusion because the rule pertains to all trainings approved by the department, not just additional training benefits.

The proposed amendment to (5)(b) is necessary to implement House Bill 652, 2023 Montana Legislature, Chapter 731, that reduced a claimant's maximum benefit amount in amendments to 39-51-2204, MCA.

24.40.925 WORK NO LONGER SUITABLE

- (1) Suitable work for an individual may become unsuitable due to circumstances beyond the individual's or employer's control. When adjudicating a work refusal or

separation from work, the department shall consider previously suitable work as not suitable when:

- (a) an individual has made a good faith effort to comply with licensing requirements or governing regulations but has failed to pass the required course(s) or licensing exam; or
 - (b) an individual has submitted to the department an individualized determination of work unsuitability due to the individual's physical or mental disability, which is long-term, indefinite, or permanent, and is certified and signed by a health care provider.
- (2) The individual bears the burden of proof that work is not suitable.

Authorizing statute(s): 39-51-301, 39-51-302, MCA

Implementing statute(s): 39-51-2104, 39-51-2304, MCA

Reasonable Necessity Statement

The proposed amendment to (1)(b) is necessary to clarify that this rule is meant to apply to physical or mental disabilities that are of a long-term, indefinite, or permanent nature. The rule does not apply to physical or mental disabilities that are temporary or short-term in nature.

24.40.1501 CHARGING BENEFIT PAYMENTS TO EXPERIENCE-RATED EMPLOYERS – CHARGEABLE EMPLOYERS

- (1) If more than one separation of employment exists from the same base period employer, charges or relief of charges will be based on the reason for the most recent separation of employment occurring prior to the effective date of the claim. Any separation of employment occurring after the effective date of a claim will not result in relief of charges on that claim, but may on a subsequent claim, if the reason for separation of employment allows relief of charge.
- (2) A claimant does not have reduced hours or wages if:
 - (a) ~~hours of available work at the time of initial claim and at the date of hire are the same;~~ the claimant performs work for the employer within seven days of the effective date of the claim;
 - (b) ~~the claimant was employed part time and there is not at least a 10 percent reduction in wages or hours in the four week period following the date of~~

~~claim.~~ the claimant continues to work for the employer after the effective date of the claim; and

- (c) the claimant's hours or wages for the four weeks before the claim date are not reduced by 10 percent or more in the four weeks after the claim date.

Authorizing statute(s): 39-51-301, 39-51-302, MCA

Implementing statute(s): 39-51-1214, MCA

Reasonable Necessity Statement

The proposed amendments are necessary to supplement the statutory language that states when an experience-rated employer will not be charged because the employer “continues to provide employment with no reduction in hours or wages;” 39-51-1214(2)(c), MCA. First, the rule is necessary because the statute only applies to experience-rated employers, and reimbursable and government employers are also not charged if they provide continued employment to a claimant without a reduction in the claimant's hours or wages. Second, the amendments to (2) are necessary to correct how the department determines that a claimant does not have a reduction in hours or wages for purposes of charging an employer's account. The proposed amendments to (2)(a) and (b) are necessary to determine that a claimant continues to be employed by an employer, as opposed to a layoff or other type of separation from employment. Subsection (2)(c) is necessary because the department only considers a claimant's wages or hours for the four weeks before and four weeks after the claim date, and the department does not consider a claimant's hours or wages at the date of hire as previously stated in (2)(a). Subsection (2)(c) is further necessary to give employer's notice of the small margin of change allowed to a claimant's wages or hours before and after a claim date that will not result in a charge to an employer's account.

24.40.1609 DUE DATE OF TAXES AND QUARTERLY REPORTS BY EMPLOYERS

- (1) Every employer must report employee wage information and pay taxes on those wages to the department each quarter. The department may request any information from the employer necessary for the collection of the tax.
- (2) An employer who does not pay any wages during a calendar quarter is not relieved of the duty to submit a quarterly wage report.
- (3) Wages become subject to tax when they are actually or constructively paid. Wages must be reported in the calendar quarter they are actually or constructively paid.

Wages are constructively paid if they are credited to the employee's account and set apart for an employee so they may be withdrawn at the employee's discretion.

- (4) The quarterly wage reports and tax payments must be sent to the department by the following due dates:

Quarter	Months Covered	Due Date
First:	January, February, March	April 30
Second:	April, May, June	July 31
Third:	July, August, September	October 31
Fourth:	October, November, December	January 31

- (5) If a due date falls on a weekend or holiday, the next business day becomes the due date.
- (6) If a tax payment or quarterly report is sent after the due date, the department may assess a penalty and interest.
- (7) All employers and third-party agents must report quarterly wage information in an electronic format approved by the department. The department may deem quarterly wage reports filed by paper or in any other format not approved by the department as untimely and subject the employer to a late filing penalty, pursuant to 39-51-1301, MCA.
- (8) A tax payment may be made by:
- (a) cash, check, or money order, accompanied by a department-approved payment voucher;
 - (b) automated clearing house (ACH) debit;
 - (c) ACH credit; or
 - (d) credit card.

Authorizing statute(s): 39-51-301, 39-51-302, MCA

Implementing statute(s): 39-51-603, 39-51-605, MCA

Reasonable Necessity Statement

The proposed amendment to the implementing statutes is necessary to add an additional statute implemented by this rule, 39-51-605, MCA, as required by the Montana Administrative Procedure Act, 2-4-305(3), MCA.

ADOPT

The rule proposed to be adopted is as follows:

NEW RULE 1 (24.40.819) REEMPLOYMENT SERVICES – NOTICE – APPOINTMENTS

- (1) The department may identify individual claimants for participation in reemployment services programs. Claimants identified by the department must participate in an appointment with a designated employment services provider to assess the claimant's individual needs. The department shall send the claimant notice of the scheduled appointment.
- (2) The department may deny benefits if a claimant fails to participate in the reemployment services program, which failure includes but is not limited to the following:
 - (a) failure to attend a scheduled appointment with employment services;
 - (b) failure to notify the employment service provider of the claimant's need to reschedule an appointment; or
 - (c) failure to comply with appointment or program requirements.

Authorizing statute(s): 39-51-301, 39-51-302, MCA

Implementing statute(s): 39-51-2104, MCA

Reasonable Necessity Statement

The proposed new rule is necessary to comply with the USDOL ETA Unemployment Insurance Program Letter No. 13-15 (UIPL No. 13-15) that details the requirements for state implementation of Unemployment Insurance (UI) Reemployment Services and Eligibility Assessment (RESEA) grants. The RESEA grants allow the department to identify individual claimants who may benefit from participation in reemployment services. The new rule is necessary to provide claimants with notice of the possibility of appointment for participation in reemployment services programs, and the consequences if a claimant fails to participate in the program.

Small Business Impact

Pursuant to 2-4-111(1), MCA, the small businesses that will probably be affected by the proposed rule change are all of the small businesses in Montana that are required to pay unemployment insurance tax on their employees. The agency has determined that the proposed rule change will not create a significant and direct impact on these small businesses.

Bill Sponsor Notification

The primary bill sponsor was contacted on April 21, 2025, by electronic mail.

Interested Persons

The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

Rule Reviewer

Quinlan L. O'Connor

Approval

Sarah Swanson, Commissioner