

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.30.102, 24.30.1302, and	)	PROPOSED AMENDMENT,
24.30.1311, the adoption of NEW	)	ADOPTION, AND REPEAL
RULES I and II, and the repeal of	)	
ARM 24.30.104, 24.30.2501,	)	
24.30.2503, 24.30.2507, 24.30.2521,	)	
24.30.2541, 24.30.2542, 24.30.2551,	)	
24.30.2553, 24.30.2554, and	)	
24.30.2558 pertaining to industrial and	)	
workplace safety	)	

TO: All Concerned Persons

1. On September 4, 2024, at 9:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

- a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/81513876481>  
Meeting ID: 815 1387 6481, Passcode: 123473  
-OR-
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656  
Meeting ID: 815 1387 6481, Passcode: 123473

2. The Department of Labor and Industry (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 August 28, 2024, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail [laborlegal@mt.gov](mailto:laborlegal@mt.gov).

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

24.30.102 OCCUPATIONAL SAFETY AND HEALTH CODE FOR PUBLIC SECTOR EMPLOYMENT (1) ~~Section 50-71-114, MCA, of the Montana Occupational Safety and Health Act provides that the Department of Labor and Industry may adopt, amend, repeal, and enforce rules for the prevention of accidents to be known as "safety codes" in every employment and place of employment, including the repair and maintenance of such places of employment to render them safe. The federal Occupational Safety and Health Act of 1970 does not include safety standards coverage for employees or political subdivisions of this state. It is the intent of this rule that public sector employees and political subdivisions of this state shall be protected to the greatest extent possible by the same safety standards~~

~~for employments covered by the federal Occupational Safety and Health Act of 1970. The department is therefore adopting~~ adopts by reference certain occupational safety and health standards, adopted by the United States Secretary of Labor under the federal Occupational Safety and Health Act of 1970. ~~The department has determined, with the assent of the Secretary of State, that publication of the rules would be unduly cumbersome and expensive. Copies of the rules adopted by reference are available and may be obtained at cost from the Montana Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728, or the Superintendent of Documents, United States Government Printing Office, 941 North Capitol Street, Washington, D.C. 20401.~~

(2) As used in the rules adopted by reference in (3) and (4)(a), unless the context clearly requires otherwise, the following definitions apply:

(a) and (b) remain the same.

~~(c) "Employee" or "public sector employee" means every person in this state, including a contractor other than an independent contractor, who is in the service of a public sector employer, as defined below, under any appointment or contract of hire, expressed or implied, oral, or written.~~

~~(d) "Employer" or "public sector employer" means this state and each county, city and county, city school district, irrigation district, all other districts established by law, and all public corporations and quasi public corporations and public agencies therein who have any person in service under any appointment or contract of hire, expressed or implied, oral or written.~~

(e) remains the same, but is renumbered (c).

(f) (d) "Injury or illness" means an abnormal condition or disorder has the meaning provided in 39-71-119, MCA.

~~(i) An injury includes cases such as, but not limited to, a cut, fracture, sprain, or amputation.~~

~~(ii) An illness includes both acute and chronic illnesses, such as, but not limited to, a skin disease, respiratory disorder, or poisoning.~~

(3) The Department of Labor and Industry adopts ~~a safety code for every place of employment conducted by a public sector employer. This safety code~~ adopts by reference the following occupational safety and health standards found in the Code of Federal Regulations (CFR), as of July 1, 2018:

(a) and (b) remain the same.

(4) The Department of Labor and Industry adopts ~~reporting requirements related to occupational safety and health for every place of employment conducted by a public sector employer.~~

~~(a) The reporting requirements adopted by reference are the following occupational safety and health reporting requirements found in the Code of Federal Regulations, as of July 1, 2018:~~

~~(i) through (iv) remain the same, but are renumbered (a) through (d).~~

~~(b) (e) For the purposes of reporting fatalities, hospitalizations, amputations, and loss of an eye pursuant to 29 CFR 1904.39, the employer is to shall contact the Montana Department of Labor and Industry safety bureau by: department directly using the department's website or by phone.~~

~~(i) electronic submission to the reporting application at the safety bureau's public web site at <http://erd.dli.mt.gov/safety-health>; or~~

~~(ii) telephone at 1-844-669-5461 (toll free).~~

~~(5) All sections adopted by reference are binding on every public sector employer even though the sections are not separately printed in a separate state pamphlet and even though they are omitted from publication in the Montana Administrative Register and the Administrative Rules of Montana. The safety standards and reporting requirements adopted by this rule and printed in the Code of Federal Regulations, Title 29, as of July 1, 2018, are considered under this rule as the printed form of the safety code, and shall be used by the department and all public sector employers, employees, and other persons when referring to the provisions of the safety code. All the provisions, remedies, and penalties found in the Montana Occupational Safety and Health Act apply to the administration of the provisions of the safety code and reporting requirements adopted by this rule.~~

~~(6) For convenience, the federal number of a particular section found in the Code of Federal Regulations should be used when referring to a section in the safety code adopted in (3). The federal number is to be preceded by the term (5). Thus, when section 1910.27 of the Code of Federal Regulations pertaining to fixed ladders is to be referred to or cited, the correct cite would be "subsection (5) 1910.27 of section 24.30.102 ARM" or "ARM 24.30.102(5) 1910.27".~~

(5) Copies of the rules adopted by reference are available by accessing the United States Department of Labor's website.

AUTH: 50-71-114, MCA

IMP: 50-71-112, 50-71-114, 50-71-115, 50-71-117, 50-71-118, MCA

REASON: The proposed amendments to (1) are necessary because the language is duplicative of 50-71-114 and 50-71-116, MCA, describing the purpose of the Montana Occupational Safety and Health Act, and it is unnecessary to repeat statements of public policy in administrative rule. The definitions for "employer" and "employee" are proposed for repeal because they are duplicative of the statutory definitions in 50-71-112, MCA. The department proposes adopting the definition of "injury or illness" from the workers' compensation statutes, 39-7-1-119, MCA, to provide clarification and consistency between statutory and administrative definitions. Section (5) is proposed for repeal because it is unnecessary to explain the process and effect of adopting federal codes by reference in the department's rule; adoption by reference in an administrative rule is expressly allowed by 2-4-307, MCA. Section (6) is proposed for repeal because it is unnecessary to provide guidance for citations in an administrative rule. Formatting for citations is often determined by the specific academic field, industry, publication, or the court, tribunal, or jurisdiction for which a person is writing. New (5) is necessary because it provides a simple means of accessing the regulations that are adopted by reference in this rule as required by 2-4-307(2), MCA. It is necessary to amend the implementing statutes to include the requirements for maintenance of records under 50-71-117, MCA.

24.30.1302 COAL MINING CODE (1) As used in the rules adopted in (2) ~~below~~, unless the context clearly requires otherwise, the following definitions apply:  
(a) through(g) remain the same.

(h) "Secretary" means the administrator of the Employment Relations Standards Division of the Department of Labor and Industry.

(2) The Department of Labor and Industry adopts ~~under 50-73-103, MCA, coal mine safety standards to protect employees who work in coal mines in this state. The following standards are adopted by reference to certain safety and health rules and standards that have been adopted by the federal government and are the coal mine safety standards found in the Code of Federal Regulations (CFR), Title 30, revised as of July 1, 2006:~~

(a) through (j) remain the same.

~~(3) All sections adopted and referred to above are binding on every employer who is covered by the Montana Coal Mining Code even though the sections are not separately printed in a separate state pamphlet and are omitted from publication in the Montana Administrative Register and the Administrative Rules of Montana. The sections referred to above that are contained in the Code of Federal Regulations referred to above are considered under this rule as the printed form of the safety rules and standards adopted under this rule, and must be used by the Department of Labor and Industry and all employers, employees, and other persons when referring to the provisions of the safety rules and standards adopted in this rule. All the provisions, remedies, and penalties found in the Montana Coal Mining Code (50-73-101 through 50-73-418, MCA) apply to the administration of the provisions of the safety rules and standards adopted in this rule. A copy of the rules adopted by reference are available in printed form by contacting the Montana Department of Labor and Industry, Employment Relations Division, Safety Bureau, P.O. Box 1728, Helena, Montana 59624-1728, or the Superintendent of Documents, United States Government Printing Office, 941 North Capitol Street, Washington, D.C. 20401.~~

~~(4) For convenience, the federal number of a particular section found in the Code of Federal Regulations should be used when referring to a section in the safety rules and standards adopted in (2) above. The federal number is to be preceded by the term (4). Thus, when section 70.100 of the Code of Federal Regulations pertaining to dust standards is to be referred to or cited, the correct cite would be "subsection (4) 70.100 of section 24.30.1302 ARM" or "ARM 24.30.1302(4) 70.100".~~

(3) Copies of the rules adopted by reference are available by accessing the United States Department of Labor's website.

AUTH: ~~50-71-304~~ 50-73-103, MCA

IMP: 50-73-103, MCA

REASON: The proposed amendments to (2) are necessary because they simplify language and remove unnecessary statutory references. Section (3) is proposed for repeal because it is unnecessary to explain the process and effect of adopting federal codes by reference in the department's rule; adoption by reference in an administrative rule is expressly allowed by 2-4-307, MCA. Section (4) is proposed for repeal because it is unnecessary to provide guidance for citations in an administrative rule. Formatting for citations is often determined by the specific academic field, industry, publication, or the court, tribunal, or jurisdiction for which a person is writing. New (3) is necessary because it provides a simple means of

accessing the regulations that are adopted by reference in this rule as required by 2-4-307(2), MCA. There is reasonable necessity to correct the authorizing statute to the specific provision that allows the department to make rules regarding safety in coal mines, 50-73-103, MCA, rather than the now-repealed statute, 50-71-301, MCA.

24.30.1311 INCORPORATION BY REFERENCE OF RULES REGARDING EMPLOYEE HEALTH AND SAFETY IN MINES OTHER THAN COAL MINES

(1) remains the same.

~~(2) The regulations incorporated by reference in (1) relate to the following:~~

~~(a) training and retraining of miners engaged in shell dredging or employed at sand, gravel, surface stone, surface clay, colloidal phosphate, or surface limestone mines;~~

~~(b) hazard communication (HAZCOM);~~

~~(c) training and retraining of miners;~~

~~(d) mine rescue teams;~~

~~(e) notification, investigation, reports and records of accidents, injuries, illnesses, employment and production in mines;~~

~~(f) safety and health standards—surface metal and nonmetal mines;~~

~~(g) safety and health standards—underground metal and nonmetal mines;~~

~~(h) health standards for metal and nonmetal mines; and~~

~~(i) occupational noise exposure.~~

~~(3) Copies of the regulations incorporated by reference in (1) may be obtained at cost from the Montana Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728, or the Superintendent of Documents, United States Government Printing Office, 941 North Capitol Street, Washington, D.C. 20401.~~

(2) Copies of the rules adopted by reference are available by accessing the United States Department of Labor's website.

AUTH: ~~50-71-301, 50-71-311~~ 50-71-114, 50-72-102, 50-72-103, MCA

IMP: ~~50-71-301, 50-71-311, 50-71-312~~ 50-72-101, 50-72-102, MCA

REASON: The proposed amendments to (2) are necessary because it is unnecessary to further summarize the content of materials that are adopted by reference when the catchphrase or "title" of the rule provides the general subject matter of the regulations that are adopted by reference. New (2) is necessary because it provides a simple means of accessing the regulations that are adopted by reference in this rule as required by 2-4-307(2), MCA. There is a reasonable necessity to update the implementing and authorizing statutes because 50-71-301, 50-71-311, and 50-71-312, MCA, are now repealed.

4. The proposed new rules are as follows:

NEW RULE I NOTICE TO EMPLOYEES ( 1) The employer shall post and maintain notices informing employees of the protections and obligations provided for

in the Montana Occupational Safety and Health Act. Notices are available by contacting the department and on the department's website.

(2) If an employer receives a citation, the employer shall immediately post an unedited and legible copy of the citation in a prominent place where it will be seen by all affected employees. The citation, and all related materials, shall remain posted for 30 days or until all abatement action has been approved by the department, whichever period is longer.

(3) If employees do not work in a central location, the employer shall disseminate the notices described in (1) and (2) to all affected employees, consistent with typical business practices for disseminating information.

AUTH: 50-71-114, MCA

IMP: 50-71-118, 50-71-119, 50-71-123, MCA

REASON: The proposed new rule is necessary because it contains the sections of ARM 24.30.104, that are not duplicative of statute, including the specific requirements for employers to provide notice to employees of safety provisions and notice to employees of citations. NEW RULE I also addresses remote workplaces and flexibility in employer/employee communications due to modern technology.

NEW RULE II EMPLOYERS WITH MORE THAN FIVE EMPLOYEES – SAFETY PROGRAM – SAFETY COMMITTEE (1) To determine if an employer must have a safety program because the employer has more than five employees, the employer shall count all fulltime, part-time, regular, temporary, leased, and seasonal workers under the employer's direction and control. This rule applies whenever there are more than five employees and continues unless or until the number of employees is less than six for three consecutive months.

(2) If an employer is a party to a collective bargaining agreement that provides for the establishment and operation of a safety committee, the terms of the collective bargaining agreement shall govern the operation of the safety committee, notwithstanding any other provisions of these rules.

(3) Federal law prohibits domination of a safety committee by management. A safety committee must be composed of representatives of both employees and management.

(4) A safety committee shall meet at least twice per year.

(5) The employer shall maintain records of the safety program for three years, including employee participation in any aspect of the safety program.

(6) The department shall not grant waivers of a safety program's safety committee requirement for any employer under any workers' compensation plan pursuant to 39-71-1505, MCA.

AUTH: 39-71-1505, MCA

IMP: 39-71-1505, MCA

REASON: The proposed new rule is necessary because it condenses the requirements for a workplace safety program that are not merely duplications of statute or "recommendations" from the rules proposed for repeal below. Specifically,

the proposed new rule includes the following transferred sections: how to count employees from ARM 24.30.2541(1), including "fulltime and part-time employees" to the list; the requirements for a safety committee in a workplace with a collective bargaining agreement from ARM 24.30.2542(1); the requirement that the employer not dominate the safety committee from ARM 24.30.2542(3); the requirements for frequent safety committee meetings from ARM 24.30.2542(4)(a); and, an employer's duty to maintain records of the safety program from ARM 24.30.2521(1)(f).

New (6) is also necessary because the department is granted permissive authority to adopt rules to allow waiver of the employer's requirement for a safety committee under 39-71-1505(3), MCA; however, the department proposes repeal of the rules allowing waiver of the safety committee requirement below, ARM 24.30.2551, 24.30.2553, 24.30.2554, and 24.30.2553, for several reasons. First, there are currently no employers that have a waiver of their safety committee requirement under these rules, and the department rarely receives requests from employers to waive the safety committee requirement. In the last two years, approximately five employers have contacted the department to inquire about waiver of the safety committee requirement. Second, all five employers that inquired about waiver of their safety committee requirement were private employers, and the department does not have jurisdiction under the Montana Safety Culture Act to inspect and enforce workplace safety laws for private employers. It is impractical for the department to maintain rules requiring review of the safety program for a private employer, with the purpose of waiving the safety committee requirement, when the department has no inspection or enforcement authority over the actual safety practices of that private employer. Third, a private employer's workers' compensation insurer is responsible for requiring a workplace safety program; an "insurer's insurance contract or agreement must require each insured employer to implement a safety program as part of the contract or agreement to provide workers' compensation coverage[.]" under 39-71-1507(4), MCA. The insurer shall also provide safety consultation services under 39-71-1506, MCA. Finally, the practical effect of this rule change is to require every employer that must have a safety program to also have a safety committee, and the department believes that safety committees are an important part of furthering the purpose of the Montana Safety Culture Act. The department believes that the proposed rule change is practical and in furtherance of workplace safety for the department, insurers, all employers, all employees, and the public.

5. The rules proposed to be repealed are as follows:

24.30.104 INSPECTIONS AND CITATIONS

AUTH: 50-71-114, MCA

IMP: 50-71-118, 50-71-119, 50-71-123, MCA

REASON: The proposed repeal is necessary because it is duplicative of statute. Section (1) is duplicative of 50-71-116, MCA, regarding the duties of public employers regarding employee safety. Subsections (1)(b) and (1)(c) are duplicative

of 50-71-117 and 50-71-118, MCA, regarding inspections, reports, and procedures for safety violations. To the extent that this rule does not duplicate statute and provides specific requirements for employers to provide notice to employees of safety provisions in (1)(a) and notice to employees of citations in (1)(d), those provisions are transferred to proposed NEW RULE I.

24.30.2501 PURPOSE

AUTH: 39-71-1505, MCA  
IMP: 39-71-1505, MCA

REASON: The proposed repeal is necessary because it is entirely duplicative of the statute describing the purpose of the Montana Safety Culture Act, 39-71-1502, MCA.

24.30.2503 DEFINITIONS

AUTH: 39-71-1505, MCA  
IMP: 39-71-1505, MCA

REASON: The proposed repeal is necessary because it is unnecessary to repeat statutory definitions in administrative rule. The authorizing and implementing statutes for this rule are part of the Montana's Workers' Compensation Act under Title 39, chapter 71, MCA, thus the statutory definitions are already applicable to these rules.

24.30.2507 STATUS OF CERTAIN PERSONAL ASSISTANTS FOR THE PURPOSE OF THE SAFETY CULTURE ACT

AUTH: 53-6-145 MCA  
IMP: 53-6-145, MCA

REASON: The proposed repeal is necessary because the Montana Safety Culture Act falls within the Workers' Compensation statutes, personal assistants are already addressed ARM 24.29.711, and ARM 24.29.711 is substantively identical to ARM 24.30.2507.

24.30.2521 EACH EMPLOYER TO HAVE EDUCATION-BASED SAFETY PROGRAM

AUTH: 39-71-1505, MCA  
IMP: 39-71-1505, MCA

REASON: The proposed repeal is necessary because it is duplicative of 39-71-1505, MCA. To the extent the rule does not repeat statutory language, the rule merely provides "recommendations" for an employer's safety program, and not actual requirements for the program. The department believes the long list of recommendations is confusing for employers and such recommendations are not



"reasonably necessary to effectuate the purpose of the statute," as required by 2-4-305(6)(b), MCA. The department asserts that the statute as written provides adequate guidance for an employer's required safety program, and the statute also acknowledges the different needs of different industries. The provision that an employer must retain documentation of safety programs for three years in (1)(f) is transferred to proposed NEW RULE II.

24.30.2541 EMPLOYERS WITH MORE THAN FIVE EMPLOYEES TO HAVE COMPREHENSIVE AND EFFECTIVE SAFETY PROGRAM

AUTH: 39-71-1505, MCA  
IMP: 39-71-1505, MCA

REASON: The proposed repeal is necessary because it is duplicative of 39-71-1502, and 39-71-1505, MCA. The rule also largely contains "recommendations" for employers, and such recommendations are not "reasonably necessary to effectuate the purpose of the statute," as required by 2-4-305(6)(b), MCA. To the extent the rule does not have repeat statutory language or include "recommendations," section (1) regarding counting employees is transferred to proposed NEW RULE II.

24.30.2542 SAFETY COMMITTEE REQUIRED FOR EVERY EMPLOYER WITH MORE THAN FIVE EMPLOYEES

AUTH: 39-71-1505, MCA  
IMP: 39-71-1505, MCA

REASON: The proposed repeal is necessary because (2) and (5) are largely duplicative of 39-71-1502, MCA. The rule is also duplicative of 39-71-1505, MCA, regarding safety program and safety committee requirements. To the extent the rule does not repeat statutory language, provisions of (1) regarding collective bargaining agreements, (3) regarding employer domination of safety committees, and (4)(a) regarding frequency of safety committee meetings are transferred to proposed NEW RULE II.

24.30.2551 AVERAGE LOST WORKDAY INCIDENCE RATE FOR OCCUPATIONAL INJURIES AND ILLNESSES

AUTH: 39-71-1505 MCA  
IMP: 39-71-1505 MCA

REASON: The proposed repeals of ARM 24.30.2551, 24.30.2553, 24.30.2554, and 24.30.2558 are necessary because the department shall no longer grant waivers of the safety committee requirement pursuant to 39-71-1505(3), MCA, as noted in the reason statement to NEW RULE II(6).

24.30.2553 WAIVER OF SAFETY COMMITTEE REQUIREMENTS FOR INDIVIDUAL PLAN NO. 1 SELF-INSURERS

AUTH: 39-71-1505, MCA  
IMP: 39-71-1505, MCA

24.30.2554 WAIVER OF SAFETY COMMITTEE REQUIREMENTS FOR  
GROUP PLAN NO. 1 SELF-INSURERS

AUTH: 39-71-1505, MCA  
IMP: 39-71-1505, MCA

24.30.2558 WAIVER OF SAFETY COMMITTEE REQUIREMENTS FOR  
PLAN NO. 2 AND PLAN NO. 3 EMPLOYERS

AUTH: 39-71-1505, MCA  
IMP: 39-71-1505, MCA

6. 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](http://dli.mt.gov/rules) or P.O. Box 1728, Helena, Montana 59624. Comments must be received no later than 5:00 p.m., September 6, 2024.

7. An electronic copy of this notice of public hearing is available at [dli.mt.gov/rules](http://dli.mt.gov/rules) and [rules.mt.gov](http://rules.mt.gov).

8. 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](http://dli.mt.gov/rules) or by sending a letter to P.O. Box 1728m Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

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

10. Pursuant to 2-4-111, MCA, the agency has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

11. Department staff has been designated to preside over and conduct this hearing.

/s/ QUINLAN L. O'CONNOR  
Quinlan L. O'Connor  
Rule Reviewer

/s/ SARAH SWANSON  
Sarah Swanson, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 30, 2024.