

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment and)	NOTICE OF PUBLIC HEARING ON
transfer of ARM 24.11.204, 24.11.317,)	PROPOSED AMENDMENT AND
24.11.335, 24.11.447, 24.11.451,)	TRANSFER, ADOPTION, AND
24.11.457, 24.11.458, 24.11.462,)	REPEAL
24.11.463, 24.11.469, 24.11.472,)	
24.11.475, 24.11.613, 24.11.915,)	
24.11.2005, 24.11.2007, 24.11.2015,)	
24.11.2201, 24.11.2204, 24.11.2205,)	
24.11.2208, 24.11.2221, 24.11.2405,)	
24.11.2407, 24.11.2504, 24.11.2506,)	
24.11.2701, 24.11.2704, 24.11.2707,)	
24.11.2711, and 24.11.2715, the)	
adoption of NEW RULES I through)	
XL, and the repeal of ARM 24.11.101,)	
24.11.201, 24.11.203, 24.11.206,)	
24.11.207, 24.11.208, 24.11.210,)	
24.11.315, 24.11.316, 24.11.318,)	
24.11.319, 24.11.320, 24.11.325,)	
24.11.326, 24.11.327, 24.11.328,)	
24.11.329, 24.11.331, 24.11.336,)	
24.11.337, 24.11.441, 24.11.442,)	
24.11.443, 24.11.445, 24.11.450A,)	
24.11.452A, 24.11.453A, 24.11.454A,)	
24.11.455, 24.11.456, 24.11.459,)	
24.11.464, 24.11.465A, 24.11.470,)	
24.11.471, 24.11.476, 24.11.481,)	
24.11.485, 24.11.487, 24.11.490,)	
24.11.491, 24.11.511, 24.11.515,)	
24.11.516, 24.11.517, 24.11.518,)	
24.11.521, 24.11.523, 24.11.525,)	
24.11.531, 24.11.534, 24.11.616,)	
24.11.617, 24.11.911, 24.11.1205,)	
24.11.1207, 24.11.1209, 24.11.1213,)	
24.11.1221, 24.11.1225, 24.11.1228,)	
24.11.1229, 24.11.2011, 24.11.2225,)	
24.11.2401, 24.11.2403, 24.11.2411,)	
24.11.2501, 24.11.2511, 24.11.2515,)	
and 24.11.2801 pertaining to)	
unemployment insurance)	
TO: All Concerned Persons		

1. On April 11, 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/897 2369 1599](https://mt-gov.zoom.us/j/89723691599)
Meeting ID: 897 2369 1599, Passcode: 205716
-OR-
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 897 2369 1599, Passcode: 205716

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 April 4, 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.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The department proposes this rulemaking in furtherance of red tape relief efforts—to simplify, shorten, and clarify administrative rules pertaining to unemployment insurance. This proposal removes language that is unnecessarily duplicative of statute, as required by 2-4-305(2), MCA, and it removes language that is internally repetitive within the existing rules. The proposal also reorganizes the rules into shorter subchapters, divided by topic, to allow ease of use by the public, interested parties, and the department. The proposed rules are edited for length, clarity, and general readability.

In 2023, Unemployment Insurance (UI) implemented a new public-facing online platform for administration of UI claims, referred to in this notice as "online portal." The proposed new rules include the expanded functions of claim administration allowed by the new online portal. For example, the new online portal allows claimants and employers to file information with the department faster and more efficiently.

NOTE: The proposed new and amended rules in this proposal are organized in the proposed new chapter, ARM Title 24, chapter 40, and the rules are divided and ordered within preliminary proposed subchapters. Like the rule language, the rule organization is subject to further review and revision.

4. The rules as proposed to be amended and transferred, transferred, or adopted provide as follows, new matter underlined, deleted matter interlined:

A. Proposed Subchapter 1: Procedural Rules

24.11.204 (24.40.XXX) 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.

~~(4)~~ (2) "Additional claim" means a claimant reactivated a claim that is reactivated as provided in ARM 24.11.445(2) following during the claim's benefit year according to [NEW RULE XXVI], after one or more separations from insured work occurring subsequent to the filing of an initial claim or of a prior additional claim employment since the claim went inactive.

~~(2) "Adjudicate" means to make a determination, redetermination, or decision relative to an issue that exists on a claim.~~

~~(3) "Agent state" means any state from or through which an individual files an interstate claim for benefits against another state.~~

~~(4) "Appeal" means a request by an interested party aggrieved by a determination, redetermination, or decision for a review of the determination, redetermination, or decision at the next higher level of review.~~

(5) (3) "Base period employer" means an employer from whom a claimant earned wages for insured work employment during the base period of the claim.

(4) "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.

(6) and (7) remain the same but are renumbered (5) and (6).

(8) (7) "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 reactivated reopened claim for unemployment insurance benefits.

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

~~(10) "Claims processing center" means the center that provides unemployment insurance claims services to the public.~~

~~(11) "Commuter claimant" means an individual who customarily commutes across state lines from a residence in one state to work in a liable state.~~

~~(12) "Contribution rate schedule" means the schedule of contribution rates assigned to employers each calendar year based upon the ratio between the trust fund balance as of October 31 and the total wages in employment for the year ending June 30.~~

(13) (9) "Days" means a specified number of consecutive calendar days, not excluding including Saturdays, Sundays, and holidays except as provided in ARM 24.11.206 [NEW RULE I].

(14) (10) "Discharge," as used in 39-51-2303, MCA, means a termination of the work employment relationship between an employer and a worker 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 worker employee.

(15) "Educational credential" means a degree, diploma, certificate, transcript, report, document, letters of designation, marks, appellations, series of letters, numbers, or words which signify, purport, or are generally taken to mean enrollment,

~~attendance, progress, or satisfactory completion of the requirements or prerequisites of a class, course or program of training, instruction, or study.~~

~~(46) (11) "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 that offers educational credentials and/or educational services.~~

~~(17) "Educational service" means a class, course, or program of training, instruction, or study.~~

~~(18) "Full-time work" means insured work in which a worker is regularly scheduled to work 40 or more hours per week.~~

(19) remains the same but is renumbered (12).

(13) "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 [NEW RULE XXVI].

(20) remains the same but is renumbered (14).

~~(24) (15) "Insured work 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.~~

~~(22) "Interstate Benefit Payment Plan" means the plan approved by the National Association of State Workforce Agencies (NASWA) under which benefits are payable to unemployed individuals absent from the state (or states) in which benefit credits have accumulated.~~

~~(23) "Interstate claimant" means an individual who files an interstate claim for benefits under the unemployment insurance law of a liable state.~~

(24) (16) "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.

~~(25) (17) "Job attached" means a claimant is able and available and has a definite or approximate date of hire or recall to insured work employment at 30 or more hours per week.~~

(26) remains the same but is renumbered (18).

~~(27) (19) "Leave of absence" means a cessation of work employment due to reasons other than an on-the-job injury, requested by the worker employee and approved by the employer, with an understanding the worker employee will be returning to work employment for the employer.~~

~~(28) (20) "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 a worker's an employee's hours of insured, full-time work regularly scheduled employment of 40 or more hours per week for a particular employer initiated by the worker 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 ~~worker~~ employee, which resulted from the ~~worker's~~ 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 ~~worker~~ employee from performing the essential functions of the job; or

(ii) remains the same.

~~(29) "Liable state" means the state responsible for administering an interstate claim for benefits established by an individual under the law of the liable state.~~

~~(30) remains the same but is renumbered (21).~~

~~(31) "Monetary determination" means a determination of a claimant's potential entitlement to benefits based upon the amount and distribution of wages in the claimant's base period.~~

~~(32) "Nonmonetary determination" means a decision involving an issue related to a claimant's qualification or eligibility for benefits, independent of claimant's monetary determination of benefits.~~

~~(33) remains the same but is renumbered (22).~~

(23) "Online portal" means the department's public-facing online system for administration of the unemployment insurance program.

~~(34) (24) "Overpayment" means the amount of benefits paid to a claimant from a state or federal unemployment compensation fund that the liable a state subsequently determines the claimant was not entitled to receive by reason because of disqualification, ineligibility, or reduction in entitlement under the that state's law of the liable state.~~

~~(35) "Participating state" means a state which has subscribed to the interstate reciprocal overpayment recovery agreement.~~

~~(36) (25) "Part-time work employment " means insured work employment in which a worker an employee is regularly scheduled to work less than 40 hours per week.~~

(26) "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.

~~(37) (27) "Permanent layoff" means an indefinite termination of the work employment relationship between an employer and a worker an employee initiated by the employer due only to a lack of work for the worker employee to perform.~~

(28) "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 [NEW RULE XXVII].

~~(38) (29) "Recently lived" as used in 39-51-2111(5), 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 work employment or was discharged from insured work employment due to domestic violence or domestic abuse.~~

~~(39) "Recovering state" identifies a state that has received a request from another state to assist in the recovery of a benefit overpayment.~~

~~(40)~~ (30) "Reopened claim" means a claimant reactivated a claim that is reactivated as provided in ARM 24.11.445(2) during the claim's benefit year according to [NEW RULE XXVI] when there ~~have been~~ were no separations from insured work subsequent to the filing of an initial claim or of a prior additional claim employment since the claim went inactive.

~~(41)~~ "Requesting state" means the state that has issued a final determination of benefit overpayment and requests another state to assist in recovering the outstanding balance from the overpaid individual.

(42) remains the same but is renumbered (31).

~~(43)~~ (32) "Separation" means any reduction in ~~a worker's~~ an employee's hours of insured work employment for a particular employer.

(44) remains the same but is renumbered (33).

~~(45)~~ (34) "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 24.11.475 [24.40.XXX APPROVAL OF TRAINING BY THE DEPARTMENT].

~~(46)~~ "Suitable work" means work the department determines a claimant is reasonably suited to perform by experience, education, or training. Suitable work is further described by ARM 24.11.485.

~~(47)~~ (35) "Suspension" means ~~an abeyance~~ a pause of the work employment relationship between an employer and a ~~worker~~ employee initiated by the employer for disciplinary, investigative, or other reasons not including a lack of work for the ~~worker~~ employee to perform.

(36) "Tax determination" means a decision regarding an employer's contributions, charges, reporting, or other issue determined pursuant to 39-51-1109, MCA.

~~(48)~~ (37) "Temporary layoff" means a suspension of the work employment relationship between an employer and a ~~worker~~ employee initiated by the employer due only to a lack of work for the ~~worker~~ employee to perform and where the employer intends to recall the ~~worker~~ employee at such time as work becomes available, except for separations from temporary work employment as defined in ARM 24.11.454A [NEW RULE XIII].

(49) remains the same but is renumbered (38).

~~(50)~~ (39) "Termination pay" means a payment from an employer to a claimant as the result of discharge or permanent layoff.

(a) through (a)(iii) remain the same.

(iv) continuation of wages for a designated period of time following cessation of work employment or other similar payment; and

(v) payments made under an incentive, ~~worker~~ employee buy-out, or similar plan designed to produce a general or specific reduction in force by inducing ~~workers~~ 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 work employment.

~~(51)~~ "Transferring state" means the state that transfers wage credits reported for a claimant to the liable state for use in determining the benefit entitlement of the claimant under the law of the liable state.

(52) ~~"Trust fund" means the unemployment insurance fund created in 39-51-401, MCA.~~

(53) remains the same but is renumbered (40).

(54) ~~"Valid claim" means an initial claim with base period wages of an amount sufficient to qualify the claimant for benefits under 39-51-2105, MCA, or under a comparable law of any other state, and which results in the establishment of a benefit year under 39-51-201, MCA, or under a comparable law of any other state, without respect to whether or not the claimant is otherwise qualified or eligible to receive benefits.~~

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

(56) ~~"Voluntary quit" means a worker left work with or without good cause attributable to the employment.~~

(57) ~~"Wage credits" means the wages reported to a state unemployment insurance program that were paid to an employee.~~

(58) ~~"Wage credits from another state" means the assignment or transfer of wage credits, under an arrangement under 39-51-504(1), MCA, to Montana or another liable state, pursuant to 20 CFR 609, 20 CFR 616, or 20 CFR 614.~~

(59) ~~"Waiting week" means a week of total unemployment, as defined by 39-51-2101, MCA, for which a claimant must file a weekly payment request but is not entitled to receive unemployment insurance benefits, pursuant to 39-51-2104, MCA.~~

(60) ~~"Week claimed" means any week with respect to which a claimant files a weekly payment request for benefits or waiting week credit.~~

(61) ~~"Week ending date" is the date on which the Saturday of any week falls.~~

(62) ~~"Week of unemployment" means any week of unemployment, as defined in the law of the liable state in which a valid claim is established.~~

(63) remains the same but is renumbered (42).

(64) (43) "Work search contact" means a documented contact by a claimant with an employer or authorized agent that hires workers for work or employment the claimant is qualified for and able to perform, and further described by ARM 24.11.453A [NEW RULE XXII].

(65) ~~"Work week" or "week of work" is a week as defined in 39-51-201, MCA, in which the claimant earns wages that are covered by unemployment insurance.~~

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, chapter 51, parts 21 through 25, 39-51-2601, 39-51-3201, 39-51-3202, 39-51-3206, MCA

REASON: The proposed amendments to the rule clarifying the terms including "work" vs. "employment" and "worker" vs. "employee" are necessary because the UI program only applies to individuals who are in or were in an employment relationship with an employer, and the terms "employer" and "employment" have specific definitions in Title 39, chapter 51, MCA, including 39-51-202 and 39-51-203, MCA.

The terms "work" and "worker" are more general and can include independent contractor relationships, to which the UI program does not generally apply.

A proposed definition of "accredited by the state of Montana," found in 39-51-2302(3), MCA, is necessary because the department requires a means for verifying accreditation for institutions that are not located in the state.

The proposed repeal of the definitions of "adjudicate" and "appeal" is necessary because both are common legal terms with established meanings, and the use of the terms in these rules references only those established meanings.

A proposed definition for "benefit determination" is necessary because it combines the definitions for two terms that the department proposes repealing: "monetary determination" and "nonmonetary determination." The proposed new definition simplifies the rules because both monetary and nonmonetary determinations follow the same procedural process in these rules. The new definition also clarifies that the determination of an overpayment amount and a determination regarding waiver of a benefit overpayment are also considered "benefit determinations" under these rules.

The proposed amendment to "claim" changing "reactivated" to "reopened" is necessary because the list of "initial, additional, or reactivated" does not describe three different types of claims. Reactivated claims include both additional claims and reopened claims, but reopened claims are not the same as initial or additional claims; therefore, the list should state "initial, additional, and reopened" claims.

The proposed repeal of the definition of "claims processing center" is necessary because it has been replaced by the term "department" throughout these rules.

The proposed repeal of the definition of "contribution rate schedule" is necessary because the term is no longer used in these rules.

The definition of "days" is amended to specify "calendar" days and to correct internal cross references to rules that are repealed in this notice.

The proposed repeal of the definitions of "educational credential" and "educational service" is necessary because neither term is used in Title 39, chapter 51, MCA, and the department proposes repealing the limited use of these terms in these rules. The department proposes amending the definition of "educational institution" and to remove the references to "educational credentials" and "educational services." As drafted, "educational credential" and "educational service" also apply to the programs defined by "State-approved training program" and ARM 24.11.475 (24.40.XXX) APPROVAL OF TRAINING BY THE DEPARTMENT; the definitions do not clarify or amplify the specific definition of "educational institution" and are therefore unnecessary. Further, as the term "educational service" is used in proposed NEW RULE XXIX, the definition is unnecessary because it is duplicative of the definition of "educational service agency" in 39-51-2108, MCA. The department

proposes further amending the definition of "educational institution" to add the reference to 39-51-2302, MCA.

The repeal of (18) "full-time work" is necessary because it was only used in these definitions, and it has been consolidated into (28) "leaving work."

The proposed definitions for "inactive claim" and "reactivated claim" are necessary to clarify the terms in NEW RULE XXVI. The proposed definitions also help clarify the definition of initial, additional, and reopened claims.

The proposed amendment of "insured work" to "insured employment" is necessary to bring consistency and specificity to the rules. "Work" is a general term that does not specifically indicate an employment relationship, and the UI program applies specifically to employers and employees.

A proposed definition of "online portal" is necessary because it is a generic term for describing the public's online access to the department's unemployment insurance program. A generic term allows for updates to programs and software without requiring updates to the department's rules.

The definition of "overpayment" is amended to remove references to the term "liable state," repealed in this notice, and to simplify language.

A proposed definition of "pension" is necessary pursuant to 39-51-2203, MCA.

The definition of "state-approved training program" is amended to correct an internal cross reference to a rule that is transferred in this notice.

The proposed repeal of the definition of "suitable work" is necessary because it is duplicative of 39-51-2304, MCA.

A proposed definition for "tax determination" is necessary pursuant to 39-51-1109, MCA, to allow clear distinction between tax determinations and benefit determinations subject to appeals, as described in proposed chapter 40, subchapter 2.

The definition of "temporary layoff" is amended to correct an internal cross reference to a rule that is repealed in this notice.

The proposed repeal of the definition of "waiting week" is necessary because it is duplicative of 39-51-2104, MCA.

The proposed repeal of the definition of "trust fund" is necessary because it is duplicative of 39-51-401, MCA.

The proposed repeal of the definition of "valid claim" is necessary because it is unnecessary to have a separate definition for the instance when a claimant has

established only monetary eligibility for a claim. The circumstances for initial monetary edibility for a claim are detailed in NEW RULE XIX.

The proposed repeal of "voluntary quit" and "wage credit" are necessary because the terms do not amplify statute and are not used in these rules.

The proposed repeal of the definition of "week ending date" is necessary because it is duplicative of the definition of "week" in 39-51-201(26), MCA.

The proposed repeal of "week claimed" is necessary because the term is only used once in these rules and does not provide additional detail beyond the common meaning of the phrase.

The proposed repeal of the definition of "week of unemployment" is necessary because it is duplicative of 39-51-2101, MCA.

The definition of "work search contact" is amended to correct an internal cross reference to a rule that is repealed in this notice.

The proposed repeal of "work week" and "week of work" is necessary because the terms are not used in these rules.

The department proposes repealing the following definitions because the procedures for interstate claims and recovery of interstate benefit overpayments are adopted by reference in NEW RULE XXXVIII and NEW RULE XXXIX. The necessary definitions for claim administration are adopted by reference in the new rules, making the definitions in the department's rules unnecessary and duplicative: "agent state," "commuter claimant," "interstate benefit payment plan," "interstate claimant," "liable state," "participating state," "recovering state," "requesting state," "transferring state," and "wage credits from another state."

24.11.915 (24.40.XXX) CONFIDENTIAL INFORMATION (1) through (4) remain the same.

(5) The department shall charge for the cost of any disclosure to a third party other than an "interested party" pursuant to ARM ~~24.11.207~~ [NEW RULE II]. Costs must be paid in full prior to the release of information. When the disclosure consists of no more than two pages of hard copy information and involves no more than one-half hour of staff time, the department shall make no charge.

(6) remains the same.

AUTH: 39-51-301, 39-51-302, 39-51-603, MCA

IMP: 39-51-501, 39-51-603, MCA

REASON: This rule is amended to correct the reference to a transferred rule.

NEW RULE I (24.40.XXX) 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 weekly payment requests under [NEW RULE XXI].

(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.

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

IMP: 39-51-301, 39-51-603, 39-51-605, Title 39, chapter 51, parts 11 through 13, and 21 through 24, MCA

REASON: The proposed new rule is necessary because it contains the entire substance of ARM 24.11.206, repealed below. The new rule updates the means for responding to requests for information and questions, including allowing online filing, and it removes references to outdated technology such as facsimile filing.

NEW RULE II (24.40.XXX) INTERESTED PARTIES (1) The department is an interested party to all issues adjudicated regarding claims for benefits and employer tax liability.

(2) A claimant is an interested party to all adjudication of claimant's eligibility and qualification for unemployment insurance benefits.

(3) Except as provided by 39-51-605, MCA, and [NEW RULE III], a base period employer is an interested party to an adjudication of the claimant's separation from employment with that employer. An employer is not an interested party to an adjudication of nonseparation issues related to a claim.

(4) An employer is an interested party to adjudication of the employer's tax determinations, including the employer's tax liability, contribution rate, application for refund, subject wages, and other tax contribution-related issues.

(5) The department shall provide only interested parties with written notice of a determination, redetermination, hearing, or appeal of each issue adjudicated by the department. Only an interested party has standing to request a redetermination, hearing, or appeal.

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

REASON: The proposed new rule is necessary because it contains the substance of ARM 24.11.207 while simplifying the language and removing internal repetition. ARM 24.11.207(5), (6), and (7) are combined into (5) of the proposed new rule.

NEW RULE III (24.40.XXX) EMPLOYER LOSS OF INTERESTED PARTY STATUS (1) An employer gives up the right to participate as an interested party in the adjudication of a claimant's claim when the employer fails to respond to a request for information or adequately answer questions from the department within eight days of the department's request or questions.

(2) The department shall provide written notice to the employer of the determination of loss of rights. The employer may then only participate as an informational witness in the claim adjudication.

(3) The department may restore the employer's interested party status if the employer shows good cause for the lack of, inadequate, or untimely responses to the department's request for information or questions.

(4) The employer and the department are the only interested parties to the adjudication of an employer's loss of interested party status.

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

IMP: 39-51-605, MCA

REASON: The proposed new rule is necessary because it contains the substance of (1), (3), (5), (6), of ARM 24.11.208, repealed below. The new rule removes ARM 24.11.208(2) and (4) that are internally repetitive, and it removes (7) that is duplicative of 39-51-605, MCA.

B. Proposed Subchapter 2: Hearing Procedure

NEW RULE IV (24.40.XXX) APPEAL OF DEPARTMENT REDETERMINATIONS - REQUEST FOR HEARING (1) An interested party may appeal a benefit redetermination or tax redetermination by filing a request for hearing. A request for hearing 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 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.

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

IMP: 2-4-201, 39-51-1109, 39-51-2402, 39-51-2407, MCA

REASON: The proposed new rule is necessary because it contains (2) through (4) of ARM 24.11.315, repealed below. Section (1) of ARM 24.11.315 is repealed because it is duplicative of 39-51-2402, MCA. ARM 24.11.315(2) is amended to detail the expectations for an interested party's appeal, and ARM 24.11.315(3) and (4) are consolidated into a single new section.

NEW RULE V (24.40.XXX) HEARING PROCEDURE (1) The conduct, timing, and means of conducting hearings are in the sound discretion of the appeals referee. The appeals referee may issue orders to govern the proceedings before and during a hearing.

(2) Unemployment insurance hearings are informal, but hearings are conducted to determine the substantial rights of all parties. The rules of evidence do not apply. However, the rules of evidence may be used as guidelines to determine the relevance, prejudice, or weight of evidence. All interested parties have the right to call and cross-examine witnesses.

(3) The Montana Rules of Civil Procedure do not apply; however, the rules may be guidelines for the appeals referee.

(4) Documents may be served electronically on any party who agrees in writing during the hearing process to electronic service. Written agreement to electronic service during claims processing does not mean the party agreed to electronic service under this rule.

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

IMP: 39-51-1109, 39-51-2403, 39-51-2407, MCA

REASON: The proposed new rule is necessary because it contains (2) of ARM 24.11.320, repealed below and (1) through (4) of ARM 24.11.328, repealed below. The new rule simplifies the procedure for benefit hearings and tax hearings because it vests authority to govern hearing proceedings with the appeals referee, and the new rule recognizes the due process right of an interested party to cross-examine witnesses.

24.11.317 (24.40.XXX) NOTICE OF BENEFITS HEARINGS NOTICE--
TIMING ~~(1) A hearing must be scheduled as soon as practical.~~

~~(2) Written notice of a tax hearing or pre-hearing conference must be mailed to all interested parties, including the department's representative, at least 20 days before the hearing or conference.~~

~~(3) (1) Written notice of a benefits hearing must be mailed sent to all interested parties at least ten days before the hearing. The hearing must be held within 30 days of the filing of the appeal. The appeals referee shall deny a request to postpone unless delay is justified by extraordinary circumstances beyond the requesting party's control.~~

~~(4) (2) A hearing notice must comply with 2-4-601, MCA, stating state the date, time, and place of the hearing, legal authority for the hearing, and the issues involved in the matter.~~

~~(5) (3) The advance notice requirements in (2) and (3) do not apply to rescheduled hearings or rescheduled prehearing conferences, if the parties have been given reasonable notification of the new date and time.~~

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

IMP: ~~39-51-1109, 39-51-2403,~~ 39-51-2407, MCA

REASON: The proposed amendments are necessary to change "mailed" to "sent" to provide for other means of transmission of notice to interested parties. Reference in (2) to the department is removed because, pursuant to ARM 24.11.207, the department is always an interested party. It does not need to be specifically enumerated. Reference to 2-4-601, MCA is removed to avoid any confusion about

the applicability of the Montana Administrative Procedure Act to UI proceedings. Necessity exists to update the implementation citations to reference appropriate hearing statutes. Inclusion of timelines for holding a hearing is incorporated from ARM 24.11.320, which is proposed to be repealed.

NEW RULE VI (24.40.XXX) TAX HEARINGS NOTICE – SCHEDULING CONFERENCE – BURDEN OF PROOF (1) The appeals referee shall send notice of the scheduling conference to all interested parties at least 14 days before the conference is scheduled.

(2) The appeals referee and interested parties shall address the following during the scheduling conference:

(a) determine the issues that must be decided by the appeals referee, noting that the appellant has the burden of proving the department erred in determining the application, duration, or amount of the tax;

(b) identify possible remedies;

(c) exchange copies of all proposed exhibits and names, addresses, and telephone numbers of all proposed witnesses;

(d) determine whether discovery is necessary and how it shall occur;

(e) set deadlines for motions;

(f) discuss hearing scheduling, logistics, and procedures; and

(g) perform any other acts or duties to facilitate the hearing and adjudication of the appeal.

(3) After the scheduling conference, the appeals referee shall issue a written scheduling order and send it to all interested parties. The scheduling order controls over prior pleadings in the matter.

(4) If a party fails to participate in the scheduling conference, or fails to comply with any prehearing order, the appeals referee may impose sanctions upon that party including, but not limited to:

(a) dismissal of the case;

(b) default judgment for the opposing party; or

(c) limitation of evidence or witnesses at the hearing.

AUTH: 39-51-302, MCA

IMP: 39-51-1109, 39-51-2403, MCA

REASON: The proposed new rule is necessary to clarify that a scheduling conference will be held in all cases involving tax redeterminations, and notice will always be provided. The new rule replaces the substance of ARM 24.11.325, repealed below, and the burden of proof in tax hearings from (1) of ARM 24.11.328, repealed below.

24.11.335 (24.40.XXX) SUBPOENAS (1) The appeals referee may issue subpoenas pursuant to 39-51-2409, MCA, on the referee's own motion, or may issue up to three to an interested party upon request. Subpoenas may be issued for the attendance of witnesses or the production of documents. Subpoenas must be served in the same manner as provided in civil actions, and fees must be paid as provided in 26-2-501, MCA.

(2) and (3) remain the same.

~~(4) The appeals referee may enter the appropriate order for failure to comply with the provisions of a subpoena.~~

AUTH: 39-51-302, MCA

IMP: 39-51-1109, 39-51-2403, 39-51-2409, MCA

REASON: The proposed amendments to (1) are necessary to clarify the authority for issuance of subpoenas as well as the required fees. Reasonable necessity exists to strike (4) because the decision to issue an order is vested in the appeals referee.

C. Proposed Subchapter 4: Wages

NEW RULE VII (24.40.XXX) WAGES (1) In addition to the definition of "wages" in 39-51-201, MCA, wages include, but are not limited to, the following types of remuneration for services:

(a) payments made from an employee's gross remuneration into deferred compensation or cafeteria plans and other similar plans. Such payments are wages reportable for the period in which the compensation was earned;

(b) advances or draws against future earnings, when paid. Payments designated as loans in the employer's records are considered wages unless the loan is to be repaid under a written schedule agreed upon by the employee and the employer;

(c) payments distributed to corporate officers or shareholders in lieu of reasonable compensation for services performed, even though designated as profits or dividends pursuant to [ARM 24.11.2506 (24.40.XXX) REASONABLE WAGES];

(d) payments for sick leave and accident disability, including payments made by a third-party insurance company to the employee. For example, if the employer pays premiums to a third party to cover sick leave or accident disability costs, the payments paid by the third party to the employee are wages. If the employee pays the premiums for such coverage, the sick leave or accident disability payments are not wages.

(2) This chapter includes wages that are actually and constructively paid. Wages are constructively paid if they are credited to the individual employee's account or set apart for an individual so that they may be drawn upon by the individual at any time, although not actually in the individual's possession.

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

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

REASON: The proposed new rule is necessary because it contains (1)(b), (g), (h), and (i) of ARM 24.11.2501, repealed below. The new rule removes ARM 24.11.2501(1)(a), (c), and (f) because they are duplicative of 39-51-201(25), MCA, and ARM 24.11.2501(2) is transferred to NEW RULE XL. Section (3) is repealed because the name to whom wages are designated may be material to an issue addressed pursuant to this chapter.

NEW RULE VIII (24.40.XXX) CASH VALUE FOR WAGE CALCULATION

(1) For the purposes of this chapter, the department must estimate the reasonable cash value of all remuneration paid in any medium other than cash. The reasonable cash value must be reported as wages by both employers and claimants for purposes of this chapter.

(2) The department determines the cash value of room and board, unless the employment contract sets the value at an amount equal to or greater than the amounts established in this rule. Room and board has at least the following cash value:

- (a) full room and board, weekly \$130
- (b) meals, per week 60
- (c) meals, per meal 3
- (d) room, per week 70

(3) The cash value of all other types of non-cash payments is the market value of the item or service received.

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

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

REASON: The proposed new rule is necessary because the department is required to determine the cash value of remuneration for services pursuant to the definition of "wages" in 39-51-201(25)(a), MCA. The new rule contains (1)(d) and (e) of ARM 24.11.2501, repealed below.

24.11.2506 (24.40.XXX) REASONABLE WAGES (1) A business filing income taxes as a corporation shall accurately report compensation for services performed by a corporate officer, LLC member or manager, or shareholder employee as wages for the purpose of unemployment insurance taxation.

(2) The department will consider time devoted to the business, position and responsibility, similar employments, and any other reasonably related factors to determine whether a corporate officer, LLC member or manager, or shareholder employee receives reasonable wages. To the extent feasible and practicable, the department will rely on applicable considerations for Internal Revenue Service determinations of reasonable compensation.

~~(2) The department shall use the following factors to evaluate whether reasonable compensation for services performed by a corporate officer, LLC member, or shareholder employee has been reported to the department as wages:~~

~~(a) qualifications and business role of corporate officer, LLC member, or shareholder employee, including but not limited to:~~

- ~~(i) the amount of time devoted to the business;~~
- ~~(ii) position and responsibility within the business; and~~
- ~~(iii) duties performed for business;~~

~~(b) compensation paid to other similarly situated employees of the business and the business entity's wage policy;~~

~~(c) a review of the State Occupational Employment and Wage Estimates for the pertinent occupation; and~~

- ~~(d) nature, size, and location of business, including:~~
 - ~~(i) complexity of the business;~~
 - ~~(ii) financial condition of the business including, but not limited to, the relationship of the compensation to gross and net business income, cash flows, total sales or revenues, and net income adjusted for non cash items such as depreciation, depletion, and amortization; and~~
 - ~~(iii) cost of living and general economic conditions in the business's locale.~~
- ~~(3) The department shall calculate the actual remuneration received by a corporate officer, LLC member, or shareholder employee by examining payments including, but not limited to, the following:~~
 - ~~(a) direct payments by check, electronic transfer, or cash;~~
 - ~~(b) payments to any family member who did not perform services for the payment;~~
 - ~~(c) payments classified as gifts, distributions of profit, dividends, owner draws or contributions, and return of capital;~~
 - ~~(d) distribution of property or services paid for by the corporation;~~
 - ~~(e) payments for personal expenses including, but not limited to direct payments for personal debts, payments of credit card bills that include personal purchases, and use of company vehicles for personal use;~~
 - ~~(f) payments classified as loans for which there is no evidence of a repayment schedule or the payment schedule does not impose a reasonable interest rate;~~
 - ~~(g) payments for rent in excess of market value; and~~
 - ~~(h) the market value of any remuneration paid in any medium other than cash.~~
- ~~(4) The department shall compare the reported wages to actual remuneration received by a corporate officer, LLC member, or shareholder employee and consider the factors enumerated by (2) to determine a reasonable compensation for services performed.~~

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

IMP: 39-51-201, 39-51-203, 39-51-602, 39-51-603, 39-51-1103, 39-51-1108, MCA

REASON: This rule was initially adopted in 2011. At that time, the department recognized the need to dissuade the payment or reporting of unrealistically low wages for high-level employees. While the issue continues to exist, the department recognizes the need to focus audit resources. This proposed amendment seeks to find the balance between the need to audit what is a misrepresentation of wages with limited resources for audits. To be clear, the acceptance of wages by unemployment insurance does not mean that such wages will be accepted for other purposes, such as federal or state income tax or business tax reporting. Further, it is recognized that an employee whose wages are underreported would be entitled to less unemployment insurance benefits than they might otherwise, should a claim be filed. Such employee would also be limited in their ability to challenge benefits received, due to their likely involvement in the determination of reportable wages.

24.11.2504 (24.40.XXX) RENTAL OF EQUIPMENT OR CAPITAL ASSETS--NOT WAGES (1) through (5) remain the same.

(6) Passenger vehicle expenses may be reimbursed either on the basis of actual receipts or upon 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.

(7) remains the same.

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

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

REASON: The proposed amendment to (6) is necessary for internal consistency and to remove the unnecessary designation specifying the "United States" Internal Revenue Service.

NEW RULE IX (24.40.XXX) PAYMENTS THAT ARE NOT WAGES – EMPLOYEE EXPENSES, JUROR FEES, DIRECTOR'S FEES, AND MILITARY DIFFERENTIAL PAY (1) Employer payments to reimburse an employee for business expenses incurred during the course and scope of employment are not wages if the reimbursement amount:

(a) is entered separately in the employer's records;

(b) is not deducted from or based on a percentage of the employee's wage;

and

(c) does not replace the customary wage for the occupation.

(2) Employer reimbursement of employee expenses must be based on:

(a) actual cost for lodging, goods, or services, supported by receipts;

(b) a flat rate for meals not exceeding the per diem allowed by the Internal Revenue Service for the year, unless the employer has a documented higher rate of reimbursement; or

(c) when an employee-furnished vehicle is used, a mileage rate no greater than that allowed by the Internal Revenue Service for that year.

(3) Expense reimbursements, fees, meals, or other payments provided to a juror by a court are not wages.

(4) Customary and reasonable director's fees for attending meetings of the board of directors of a corporation are not wages, if the fees are not paid in lieu of reasonable compensation for services performed.

(5) Payments made by an employer to an employee who is called to active duty in the military services for more than 30 days, when the payments represent a replacement of part or all the wages the employee would have received for performing services for the employer, to be military differential pay and not wages for purposes of Title 39, chapter 51, MCA.

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

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

REASON: The proposed new rule is necessary because it combines the entirety of ARM 24.11.2511, repealed below, and (1), (4), and (6) of ARM 24.11.2515, repealed

below. Sections (2), (3), and (5) of ARM 24.11.2515 are repealed and not transferred because they are duplicative of 39-51-201(25), MCA.

D. Proposed Subchapter 5: Employee Status

24.11.2407 (24.40.XXX) EMPLOYEE STATUS – DETERMINATION OF INDEPENDENT CONTRACTORS – DEPARTMENT PROCEDURES (1) remains the same.

~~(2) To determine whether an independent contractor or employment relationship exists, the department may:~~

- ~~(a) review written contracts between the individual and the employing unit;~~
- ~~(b) interview the individual, co-workers, or the employing unit;~~
- ~~(c) obtain statements from third parties;~~
- ~~(d) examine the books and records of the employing unit;~~
- ~~(e) review filing status on income tax returns; and~~
- ~~(f) make any other investigation necessary to determine employment status.~~

~~(3) (2)~~ After investigation, the department may issue an initial written determination on whether an individual is an independent contractor. Any person or employing unit aggrieved by this initial determination may request investigation and a decision by the department's Independent Contractor Central Unit (ICCU) compliance and investigations bureau pursuant to ARM 24.11.203 and ARM Title 24, chapter 35, subchapters 2 and 3, within ten days of notice of the initial determination.

(a) A party is considered to have been given notice on the date a written notice is ~~personally delivered~~ served or three days after a written notice is mailed to the party.

(b) remains the same.

(4) remains the same, but is renumbered (3).

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

IMP: 39-51-201, 39-51-204, 39-51-1109, 39-51-2402, 39-71-418, MCA

REASON: The proposed amendment is necessary to correct references to a department program and to clarify language regarding service. Section (2) is proposed to be removed because it is duplicative of ARM 24.35.202, which is incorporated into this rule.

24.11.2405 (24.40.XXX) STATUS OF CERTAIN PERSONAL ASSISTANTS
(1) remains the same.

AUTH: 39-51-301, 39-51-302, 53-6-145, MCA

IMP: 53-6-145, MCA

REASON: The proposed transfer of this rule is necessary because the department proposes transferring the entirety of UI program's rules from ARM Title 24, chapter 11 to a new subchapter in ARM Title 24, chapter 40, to aid in organization and clarity of the rules.

E. Proposed Subchapter 6: Separation from Employment

24.11.451 (24.40.XXX) SIX-WEEK RULE (1) The department investigates each separation from insured ~~work employment~~ that occurred during the six weeks immediately ~~preceding before~~ the effective date of an initial or an additional claim. The department shall adjudicate all separations that occurred during the six-week period except:

(a) when the claimant separated from insured ~~work employment~~ with the same employer more than once, the department shall adjudicate only the last separation involving that employer; or

(b) when the claimant is being paid their regular wages during an administrative leave; ~~or~~

~~(c) where ARM 24.11.454A applies due to a valid notice.~~

(2) If the claimant did not separate from insured ~~work employment~~ during the six-week period, the department shall investigate and adjudicate the claimant's most recent separation from insured ~~work employment~~ that occurred ~~prior to~~ before the six weeks immediately preceding the effective date of the claim.

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

IMP: 39-51-2301, 39-51-2302, 39-51-2303, 39-51-2304, MCA

REASON: The proposed amendments are necessary to remove language referencing the repealed rule, ARM 24.11.454A, and the reference is not an exception to the six-week rule as drafted. The determination of a valid notice of separation in ARM 24.11.454A, now NEW RULE X and NEW RULE XI, may require the department to adjudicate that separation; therefore, a valid notice of separation does not create an exception to the requirement that any separation occurring within the six weeks before the claim's effective date must be adjudicated.

NEW RULE X (24.40.XXX) LEAVING WORK (1) Following a claimant's notice of intent to leave work, the department shall determine the reason for the separation in the following manner.

(a) If a claimant's notice of intent to leave work is valid, the department shall consider the claimant to have left employment voluntarily as of the date identified by the valid notice.

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

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

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

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

REASON: The proposed new rule is necessary because it contains (1) of ARM 24.11.454A.

NEW RULE XI (24.40.XXX) DISCHARGE BY EMPLOYER (1) Following an employer's notice of intent to discharge a claimant, the department shall determine the reason for the separation in the following manner:

(a) when an employer's notice of discharge is valid, the department shall consider the claimant to have been discharged, regardless of whether the claimant left employment voluntarily prior to the intended date of termination; or

(b) when an employer attempts to retract a valid notice of termination and the claimant does not accept the retraction, the department shall consider the claimant to have been discharged.

(2) When an employer's notice of discharge is not valid and the claimant left solely in response to the invalid notice, the department shall consider the claimant to have left employment voluntarily.

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

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

REASON: The proposed new rule is necessary because it contains (2) of ARM 24.11.454A. The language is also clarified because a "notice of termination" may mean an employee is subject to a permanent layoff under the definition of "termination" in ARM 24.11.204(49). If a valid notice of termination is notice of a permanent layoff, it is not a "discharge" because a discharge is "a termination of the work relationship between an employer and a worker initiated by the employer, for reasons other than a lack of work," in ARM 24.11.204(14).

NEW RULE XII (24.40.XXX) CONSTRUCTIVE QUIT – LEAVING WORK

(1) A claimant is considered to have constructively quit employment:

(a) when an employer discharges a claimant for an act or omission that made it impracticable for the employer to utilize the claimant's services and the claimant knew or should have known that the act or omission would jeopardize the claimant's job and likely result in discharge; or

(b) when the claimant fails to meet specified conditions of employment, which may include but are not limited to:

(i) failure to meet license or permit requirements for employment; or

(ii) failure to maintain insurability.

(2) An employee who constructively quit employment initiated the separation and left work.

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

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

REASON: The proposed new rule is necessary because it contains (3) of ARM 24.11.454A. Section (2) is necessary to clarify that a constructive quit is a separation from work initiated by the employee, and therefore is considered the employee leaving work.

NEW RULE XIII (24.40.XXX) LAYOFF OF TEMPORARY EMPLOYMENT – VOLUNTARY LAYOFF (1) When a claimant and an employer agree to temporary employment, the department shall consider the claimant to have been laid off due to lack of work when:

- (a) the claimant completes the assigned work;
- (b) a previously agreed upon verbal or written contract ends;
- (c) the employer no longer has the same hours, wages, terms of employment, and working conditions available to the claimant; or
- (d) the claimant has been hired by a client company of the employer as a result of a verbal or written employment agreement.

(2) When a claimant volunteers to be laid off from employment, the claimant is considered to be laid off for lack of work when:

- (a) the employer has a written workforce reduction plan or policy that allows an employee to volunteer to be laid off due to a lack of work;
- (b) the layoff is due to a lack of work; and
- (c) the employer identifies the claimant as a claimant subject to the layoff.

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

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

REASON: The proposed new rule is necessary because it contains (4) of ARM 24.11.454A and all of ARM 24.11.456, both repealed below.

24.11.457 (24.40.XXX) LEAVING WORK WITH OR WITHOUT GOOD CAUSE ATTRIBUTABLE TO THE EMPLOYMENT (1) and (1)(a) remain the same.

(b) the claimant left work that the department determines ~~to have become unsuitable~~ is no longer suitable work pursuant to ARM ~~24.11.485~~ [NEW RULE XXXI]; or

(c) the claimant left work within 30 days of returning to state-approved training, in accordance with ARM ~~24.11.475~~ [24.40.XXX APPROVAL OF TRAINING BY THE DEPARTMENT].

(2) and (2)(a) remain the same.

(b) unreasonable actions by the employer concerning hours, wages, terms of employment or working conditions, including, but not limited to, reductions of 20 percent or more in the ~~claimant's~~ customary wages or hours;

(c) a condition underlying a workers' compensation or occupational disease claim for which liability has been accepted by a workers' compensation insurer.

(i) ~~If the condition is one for which liability has not been accepted by the workers' compensation insurer~~ has not accepted liability for the condition, the department shall independently evaluate the condition to determine whether the condition appears to result from the ~~claimant's~~ employment.

(ii) ~~If, after evaluation, the department determines by a preponderance of the evidence that the condition appears to the satisfaction of the department to be is work employment related~~, the department shall consider the condition to provide a compelling reason for leaving work; or

(d) remains the same.

(3) The claimant has the burden of proving their separation from employment was for good cause attributable to their employment.

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

MP: 39-51-2302, 39-51-2304, 39-51-2307, MCA

REASON: The proposed amendments are necessary to clarify the burden used by the department to determine if a claim is due to a work-related injury when a claim has not been accepted by a workers' compensation insurance carrier. The amendments reflect that an individual has the burden of establishing the separation from employment was for good cause attributable to the employment pursuant to *Crouse v. State*, 2017 MT 254, ¶ 18, 389 Mont. 90, 403 P.3d 1260.

NEW RULE XIV (24.40.XXX) DISCHARGE FOR MISCONDUCT (1) The employer has the burden of proving that an employee was discharged for misconduct, as defined in 39-51-201 and 39-51-2303, MCA.

(2) A determination of misconduct must be supported by substantial evidence in the record. Substantial evidence is admissible, reliable evidence that a reasonable person would take as true in the normal course of events.

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

IMP: 39-51-201, 39-51-2303, MCA

REASON: The proposed new rule is necessary to direct a claimant or any other person to the statutory definitions for misconduct found in 39-51-201(19) and 39-51-2303, MCA, and to clarify that an employer's claim of employee misconduct must be proven by the employer and supported by substantial evidence in the record pursuant to *Bean v. Dep't of Labor & Indus.*, 1998 MT 222, ¶¶ 14-15, 290 Mont. 496, 965 P.2d 256.

24.11.462 (24.40.XXX) OFF-DUTY CONDUCT AS MISCONDUCT

~~(1) While misconduct usually occurs during the claimant's normal working hours, "off-duty"~~ "Off-duty" conduct may constitute misconduct if it meets the criteria in 39-51-201, MCA, and if the employer shows by a preponderance of the evidence that such conduct:

(a) through (2) remain the same.

~~(3) The employer must demonstrate by a preponderance of the evidence that the off-duty conduct significantly affected the employment relationship.~~

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

IMP: 39-51-201, 39-51-2303, MCA

REASON: The proposed amendments are necessary to clarify and simplify language.

NEW RULE XV (24.40.XXX) EFFECTIVE DATE OF SEPARATION FROM EMPLOYMENT (1) Except as provided in (2), an eligibility determination for a

claimant leaving employment or a claimant's discharge is effective on the Sunday of the week of the last date of employment.

(2) If the separating action occurs after the last date of employment but before the next regularly scheduled shift, the separation is effective the latest of the following dates:

- (a) the week of the separating act;
- (b) the week the claim was filed or reactivated; or
- (c) the week the payment request is filed.

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

IMP: 39-51-2101, MCA

REASON: The proposed new rule is necessary because it contains (8) of ARM 24.11.452A, repealed below.

F. Proposed Subchapter 8: Claims for Benefits

NEW RULE XVI (24.40.XXX) CLAIMS FOR BENEFITS (1) A claimant must file an initial claim by using the online portal, or by calling the department to request filing assistance. The claimant shall provide all information requested by the department for proper claim administration. The information required from the claimant includes, but is not limited to:

- (a) the claimant's name, physical address, mailing address, and demographic data;
 - (b) the claimant's social security number;
 - (c) whether the claimant is a United States citizen and, if not, the claimant's alien registration permit number;
 - (d) whether the claimant has an existing claim in the current benefit year under any state or federal unemployment insurance or unemployment compensation law;
 - (e) whether the claimant is totally unemployed;
 - (f) whether the claimant is able to work, available for work, and seeking work;
- and
- (g) the names and addresses of all employers the claimant worked for in the most recent 18 months, the beginning and ending dates of the employment for each employer, and the reasons for the claimant's separation from employment with each employer.

(2) The department may require the claimant to provide verification, written or otherwise, of any information the claimant provided or that was requested from the claimant in connection to the claim.

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, 39-51-2401, MCA

REASON: The proposed new rule is necessary because it contains the basic information for filing a claim for benefits, and it replaces (1) and (2) of ARM 24.11.441, repealed below.

NEW RULE XVII (24.40.XXX) EFFECTIVE DATE, BACKDATING, AND CANCELLATION OF CLAIM (1) A claim is effective on the Sunday of the week in which the claim is filed and remains in effect until:

- (a) the end of the benefit year; or
- (b) the claim is cancelled.

(2) A claimant may request cancellation of a claim within ten days after the date of an initial or revised monetary determination. A cancellation request may be done through the online portal or by mail.

(3) The department may backdate a claim or grant a late request to cancel a claim if the claimant shows good cause for the delay in filing the claim or requesting cancellation.

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

IMP: 39-51-201, 39-51-2101, 39-51-2102, 39-51-2104, MCA

REASON: The proposed new rule is necessary because the effective date and cancellation of a claim was previously in (4) through (6) of ARM 24.11.441, repealed below.

NEW RULE XVIII (24.40.XXX) CLAIMANT AGENT DESIGNATION (1) A claimant may designate another person to serve as the claimant's agent and handle the claim on the claimant's behalf. To designate an agent, a claimant must complete an agent designation form either through the online portal or by contacting the department by mail or phone to request a form. The agent designation form specifies the limits of the agent's authority and the time period covered by the designation.

(2) Unless the claimant indicates otherwise on the agent designation form, the agent may do the following on behalf of the claimant:

- (a) file a new claim, reactivate an inactive claim, or file a continued claim;
- (b) provide information to the department and respond to department requests for information; and
- (c) request a redetermination or appeal of a determination of benefit eligibility.

(3) Claimant may change, revoke, or renew the agent's designation at any time by notifying the department in writing either through the online portal or through the mail.

(4) An agent designation expires after one year from the date of the designation or when a new claim is filed, whichever occurs first.

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

IMP: 39-51-3201, MCA

REASON: The proposed new rule is necessary because it replaces ARM 24.11.210. The new rule allows for claimants to complete claimant agent designations online, and the rule simplifies the designation levels for an agent's authority.

NEW RULE XIX (24.40.XXX) INITIAL MONETARY DETERMINATION

(1) After filing an initial claim, a claimant will receive an initial monetary determination stating whether the claimant has sufficient wages to qualify for benefits.

(2) The initial monetary determination informs the claimant of the department's records from base period employers used to calculate the claimant's benefit amount, and the effective date of the claim.

(3) If a claimant's wage records have not been received, and the claimant was employed by an insured employer, the claimant may support their claimed wages by providing an affidavit and documentation establishing the amount of base period wages as follows:

(a) unpaid wages may be considered if the claimant completes a signed, dated, and notarized affidavit stating the following:

- (i) the name and address of any employer from whom wages are due;
- (ii) the amount of unpaid wages; and
- (iii) the reasons why the wages have not been paid; and

(b) the claimant provides at least one of the following documents to show unpaid wages:

- (i) a W-2 or 1099 form as required by the Internal Revenue Service;
- (ii) a signed statement from the employer affirming the truth of the claimant's affidavit;
- (iii) a copy of the employer's schedule of assets and liabilities filed in a bankruptcy proceeding showing the unpaid wage claim;
- (iv) a copy of the claimant's wage claim filed with the department, if the department has not dismissed the wage claim; or
- (v) a copy of a decision of the department or a court of competent jurisdiction stating that the wages are owed the claimant.

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

IMP: 39-51-2105, 39-51-2201, 39-51-2202, 39-51-2203, 39-51-2204, MCA

REASON: The proposed new rule is necessary because it focuses on the procedural aspects of an initial monetary determination and contains (1), (2), (4), (5)(a), (5)(b), (7), and (8) of ARM 24.11.442.

NEW RULE XX (24.40.XXX) BASE PERIOD WAGE CALCULATION (1) A claimant's base period wages are the wages earned from a base period employer prior to the claimant's period of unemployment. A claimant's base period wages are used to calculate the claimant's benefit amount.

(a) For the purposes of this rule, base period wages are deemed to be "used" when the base period wages are:

(i) part of the calculation that establishes the monetary amount of benefits payable on the claim;

(ii) the basis for establishing the claim's benefit year; and

(iii) a sufficient amount to qualify the claimant for benefits, if the claimant is otherwise eligible to receive benefits with respect to that claim.

(b) Base period wages used to establish a monetary determination and a benefit year in any state, including Montana, may not be:

(i) used by this state to establish a second or subsequent monetary determination and benefit year; or

(ii) transferred by this state to another state for the purpose of combining wages and employers as provided by 39-51-504, MCA.

(2) The department shall consider the following payments as wages and assign the following payments to the following periods:

(a) Payments made for termination of insured employment generally known or described as severance pay, separation pay, termination pay, wages in lieu of notice, continuation of wages for a designated period of time following cessation of employment, or other similar payment, and 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, are attributable to the quarter in which the separation from employment occurred.

(b) Accrued vacation and sick leave paid at or after separation, other than a temporary layoff, are attributable to the quarter in which the separation from employment occurred.

(c) Bonuses, awards, incentives, rewards, profit sharing, and stocks are attributable to the quarter the payment was issued.

(d) Holiday pay is attributable to the quarter the payment was issued.

(e) Payments received for accrued unused vacation, sick leave, compensatory time, or other similar leave when separation has not occurred or during periods of temporary layoff are attributable to the quarter in which the payment was issued. These payments are sometimes also known as a "cash-out" of leave benefits.

(f) Backpay and settlements, in all cases, will be prorated back over the time the payment represents. Only the portion of the payment that is wages which would have been earned, or wages earned and not paid, will be applied to weeks claimed and quarterly wages.

(g) Use of vacation or sick leave, compensatory time, or other similar leave paid during the course of insured employment, including periods of temporary layoff, for time off from employment for vacation, whether voluntary or mandated, sick leave, or other leave with pay is attributable to the quarter the payment was issued.

(h) Royalties, residual payments, and commissions are attributable to the quarter in which the payment was issued.

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

IMP: 39-51-2105, 39-51-2201, 39-51-2202, 39-51-2203, 39-51-2204, MCA

REASON: The proposed new rule is necessary because it contains (1)(a), (5), and (6) of ARM 24.11.442.

NEW RULE XXI (24.40.XXX) 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 calendar days later.

(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 failing. 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 [NEW RULE XXVI].

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

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

REASON: The proposed new rule is necessary because it replaces ARM 24.11.443, repealed below. The new rule removes references to outdated technology and requirements for filing claims for benefits.

24.11.447 (24.40.XXX) WORK REGISTRATION AND EXCEPTIONS ~~(1) In accordance with 39-51-2102 and 39-51-2104, MCA, all claimants must register for work with the Workforce Services office serving the area in which the claimant resides, unless excused by the department. All claimants who are required to register must also maintain their work registration in an active status (as defined by the Workforce Services Division) as one of the eligibility conditions to receive benefits.~~

~~(2) A claimant who is excused from registering is not required to actively seek work, but must meet all other eligibility requirements in order to receive benefits. Work registration exceptions are limited to the following common circumstances:~~

~~(a) Job attached claimants, as defined in ARM 24.11.452A, must maintain contact with the employer to whom they are attached, and must return to work when requested by the employer.~~

~~(b) Union attached claimants, as defined in ARM 24.11.452A, must comply with the union's requirements to be considered a member in good standing and be listed on the union's out-of-work list.~~

~~(c) Labor dispute claimants who are unemployed due to a labor dispute may be excused from registering until a determination under ARM 24.11.465A is issued. If benefits are allowed, the claimant must either register for work or must provide sufficient information to the department to qualify for an exception as job attached or union attached within the time period specified in ARM 24.11.452A.~~

~~(d) Individuals participating in approved federal training programs under 39-51-2602, MCA.~~

~~(3) (1) Registration exceptions may be granted to other individuals or groups if the department finds the exception to be consistent with the purpose of the unemployment insurance program. Registration exceptions cannot be granted if prohibited by state or federal laws governing certain unemployment insurance programs.~~

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

IMP: 39-51-2104, MCA

REASON: The proposed amendments are necessary to remove language that is duplicative of 39-51-2104, MCA, the definitions for "job attached" and "union attached" in ARM 24.11.204(25) and (53) and ARM 24.11.465A. Section 39-51-2104(3)(c), MCA, allows the department discretion to determine who is required to register with workforce services, and a claimant's registration with the department's workforce services is no longer a federal requirement for benefits.

NEW RULE XXII (24.40.XXX) WORK SEARCH CONTACTS (1) A valid work search contact requires a claimant to directly contact an employer, or an authorized agent of an employer, and complete a job application or submit a resume

that enables the employer to contact the claimant to arrange an interview or to commence 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 employer, or for a different position with the same 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.

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

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

REASON: The proposed new rule is necessary because it replaces ARM 24.11.453A. The new rule removes language that is duplicative of ARM 24.11.475, and it removes references to repealed ARM 24.11.470 and 24.11.471.

NEW RULE XXIII (24.40.XXX) DETERMINATIONS OF BENEFIT ELIGIBILITY AND QUALIFICATION (1) In addition to the determination issued under [NEW RULE XIX], 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 [NEW RULE I].

(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 [NEW RULE III].

(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.

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

IMP: 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

REASON: The proposed new rule is necessary because it contains the department's procedure for initial determination of issues affecting a claimant's benefits. The new rule contains (1) through (7) of ARM 24.11.450A, repealed below.

NEW RULE XXIV (24.40.XXX) REDETERMINATION (1) An interested party may request a redetermination by submitting a request to the department, by the online portal or mail, together with any additional information the party wishes the department to consider within ten days of the service of the determination.

(2) 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) The department shall provide notice of the redetermination to all interested parties.

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

IMP: 39-51-605, 39-51-2402, MCA

REASON: The proposed new rule is necessary because it clarifies the procedure for requesting redetermination and contains (8), (9), (10), and (11) of ARM 24.11.450A, repealed below.

NEW RULE XXV (24.40.XXX) DEPARTMENT REDETERMINATION OF BENEFIT REQUALIFICATION OR RESTORED ELIGIBILITY – TIME LIMIT (1) The department may, in its sole discretion, make a redetermination of a claimant's disqualification for benefits under 39-51-2302, 39-51-2303, or 39-51-2304, MCA, or ineligibility under 39-51-2104, MCA, for up to two years after the date of the original determination.

(2) The department shall consider all new or discovered information to make the redetermination.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-605, 39-51-2402, MCA

REASON: The proposed new rule is necessary because it clarifies that a request for redetermination is only required in limited circumstances at the discretion of the department. The new rule contains (8) and (12) of ARM 24.11.450A, repealed below.

NEW RULE XXVI (24.40.XXX) INACTIVE CLAIMS--REACTIVATING A

CLAIM (1) A claim for benefits becomes inactive if a claimant does not request benefit payments for four consecutive weeks. If a claim remains inactive after the end of the claim's benefit year, the claimant must file a new claim for benefits.

(2) A claimant may reactivate a claim during the claim's benefit year by:

(a) calling the department and requesting that the claim be reactivated; or
(b) accessing the department's online portal and following the instructions to reactivate the claim.

(3) To reactivate a claim, a claimant must provide any information relevant to claim qualifications or eligibility, including any separation from insured employment.

(4) A reactivated claim is effective on the Sunday of the calendar week in which the claimant reactivates the claim.

(5) The department may backdate a reactivated claim if the claimant shows good cause for the delay in reactivating the claim.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2103, 39-51-2104, 39-51-2401, MCA

REASON: The proposed new rule is necessary because it replaces ARM 24.11.445.

G. Proposed Subchapter 9: Circumstances Affecting Benefit Eligibility and Qualifications

NEW RULE XXVII (24.40.XXX) CLAIMANT'S FAILURE TO UPDATE

MAILING ADDRESS (1) The department may determine a claimant to be ineligible for benefits when a claimant fails to provide the department with an updated mailing address within three days of a change to the claimant's mailing address.

(2) The department shall reinstate the claimant's benefit eligibility upon a receipt of an updated mailing address if the claimant is otherwise eligible for benefits.

(3) The benefit eligibility may be backdated if the claimant shows good cause for the delay in updating the mailing address.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2104, MCA

REASON: The proposed new rule is necessary because it contains (6) of ARM 24.11.452A, repealed below. The department requires a current mailing address for all claimants for claim administration purposes including communication and claimant identification.

24.11.475 (24.40.XXX) APPROVAL OF TRAINING BY THE DEPARTMENT – ADDITIONAL TRAINING BENEFITS (1) ~~The department may pay benefits to a claimant engaged in a state-approved training program.~~

(2) through (4) remain the same but are renumbered (1) through (3).

~~(5) The department shall not disqualify a claimant under the provisions of 39-51-2302, MCA, when the claimant voluntarily leaves employment within 30 days of resuming participation in a state-approved training program.~~

~~(6) (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, pursuant to ARM 24.11.476.

(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 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.

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

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

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

REASON: The proposed amendments are necessary to remove language that is duplicative of statute in (1). New (5) regarding additional training benefits is proposed to be transferred from ARM 24.11.476, repealed below.

NEW RULE XXVIII (24.40.XXX) FOREIGN TRAVEL (1) The department may deny benefits if the claimant is residing in or is traveling to or in a foreign country.

(2) The department may allow benefits to be paid to a claimant who resides in or travels to a country that has executed a reciprocal agreement with the United States government regarding unemployment insurance.

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

IMP: 39-51-504, MCA

REASON: The proposed new rule is adopted because it contains (5)(c)(iv) and (7) of ARM 24.11.452A, repealed below.

24.11.458 (24.40.XXX) SELF-EMPLOYMENT (1) The department may determine a claimant who is engaged in self-employment to be eligible for benefits ~~under 39-51-2115, MCA, or ARM 24.11.452A~~ when the claimant is able, available for, and actively seeking suitable insured work employment and is willing to accept an offer of or a referral to suitable insured work employment, even if acceptance of the offer of work would require the claimant to ~~forego~~ forgo all or a part of the self-employment venture.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2101, 39-51-2115, MCA

REASON: The proposed amendments are necessary to remove unnecessary statutory references and references to repealed rules.

24.11.463 (24.40.XXX) LIE DETECTOR TESTS--DRUG AND ALCOHOL TESTING (1) A claimant will not be disqualified for benefits under this chapter solely for the reason that the claimant is denied work employment or continuation of work employment for refusing to submit to a polygraph test or any form of a mechanical lie detector test, or on the basis of the results of any such test.

~~(2) A claimant cannot be disqualified for benefits under this chapter solely for refusal to submit to drug or alcohol testing required by an employer or prospective employer, or on the basis of the results of such a test, unless the testing procedures fully comply with federal drug and alcohol testing statutes and regulations applicable to private sector workers, or the provisions of the Workforce Drug and Alcohol Testing Act found in Title 39, chapter 2, MCA. This rule does not apply to a drug test for marijuana or marijuana products that was administered to an individual who is a registered cardholder under Title 16, chapter 12, part 5, MCA.~~

~~(3) (2)~~ An individual disqualified for benefits in accordance with ~~(2)~~ based on 39-51-2303(3), MCA remains disqualified until the individual has performed services:

- (a) and (b) remain the same.
- (4) remains the same, but is renumbered (3).

AUTH: 39-51-301, 39-51-302, MCA
IMP: ~~39-51-2302~~, 39-51-2303, 39-51-2304, MCA

REASON: The proposed amendments are necessary to remove (2) because it is duplicative of 39-51-2303, MCA, and to correct implementing statutes.

NEW RULE XXIX (24.40.XXX) SERVICES IN EDUCATIONAL INSTITUTIONS (1) Individuals who perform services for an academic institution in an instructional, research, or principal administrative capacity include the following:
(a) Individuals in an instructional capacity include teachers in formal classrooms and seminars, tutors, and those who direct or assist students in research and learning.

(b) Individuals in a research capacity include those who direct a research project and those staff directly engaged in gathering, correlating, and evaluating information and making findings.

(c) Individuals in a principal administrative capacity include school principals, school superintendents, officers of the institution, the board of directors, business managers, deans, associate deans, university public relations directors, comptrollers, development officers, chief librarians, registrars, and any individuals who, although they may lack official titles, actually serve in a principal administrative capacity.

(2) "Reasonable assurance" means that there is a written, oral, or implied agreement that the individual will perform services in the same capacity in the next academic year or term.

(3) An individual who performed services in the first academic year or term has reasonable assurance if the educational institution gave the individual a bona fide offer of the same job in the same capacity for the next academic year or term, whether or not the individual accepts the bona fide offer.

(4) An individual who performed services in the first of any two academic years or terms for an educational institution has reasonable assurance of performing services in the same capacity in the second academic year or term, regardless of the following:

(a) the individual is required to reapply for a position;

(b) the individual has advised the institution of the individual's intention not to return to employment in the subsequent academic year or term; or

(c) the educational institution has advised the individual or the department that employment in the next academic year or term is contingent upon adequate funding or enrollment.

(5) An individual does not have reasonable assurances in the following circumstances:

(a) if the economic terms and conditions are substantially less than the economic terms and conditions of the job in the previous academic year or term; or

(b) if an educational institution advised the individual or the department that employment in the next academic year or term is contingent upon adequate funding or enrollment; and

(i) the individual has been given unequivocal notice that the individual will not be rehired for the subsequent academic year or term;

(ii) the department determines that there is not a pattern, either as to the particular individual or as to the class of employees to which the individual belongs, of such notice being followed by subsequent reemployment by the educational institution; and

(iii) the department determines that there is not substantial evidence of a continuing employment relationship between the individual and the educational institution during the period between the first and next academic years or terms, including but not limited to, the continuance of employee benefits during the period.

(6) If the department determined that an individual did not have reasonable assurances, and the individual was later given reasonable assurances, any benefits that were paid to the individual based on the initial determination of no reasonable

assurances shall cease starting on the date the individual received reasonable assurances.

(7) If the department determined that an individual had reasonable assurances, but the individual continues to be unemployed when the academic year or term begins, the individual may be allowed benefits:

- (a) from the date the offer of employment was withdrawn; or
- (b) from the date the claimant was given reasonable assurance if it is determined that the original offer of employment was not a bona fide offer.

(8) Individuals at educational institutions or educational service agencies who are customarily employed for the educational institution or educational service agency during the period between academic years or terms or during customary vacation periods or holiday recesses within terms are not subject to the provisions of 39-51-2108, MCA.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2108, MCA

REASON: The proposed new rule is necessary because it clarifies and reorganizes the majority of the sections from ARM 24.11.464, repealed below. Subsection (1)(c)(ii) of ARM 24.11.464 is repealed because it is duplicative of 39-51-2108(3), MCA, and (1)(d) is repealed because "same capacity" is self-explanatory in the context of the rules.

NEW RULE XXX (24.40.XXX) DISQUALIFICATION DUE TO STRIKE

(1) For the purposes of 39-51-2305, MCA, and of this rule, the following definitions and interpretations apply:

- (a) "Grade or class of workers" means:
 - (i) workers who are members of a particular bargaining unit; or
 - (ii) workers whose jobs are similar or integrated or who have substantial mutual interests or similarities in wages, hours, and other conditions of work.
- (b) "Labor dispute" means any controversy concerning terms, tenure, or conditions of work or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of work, regardless of whether the disputants stand in the proximate relation of employer and employee.

(c) "Strike" means a concerted cessation of work by workers in an effort to obtain or to resist some change in conditions of work.

(2) A worker is participating in the labor dispute if the worker:

- (a) is picketing, refusing to cross a picket line, or refusing to report for work;
- or

(b) is a member of a bargaining unit that voted to authorize the strike.

(3) A worker is financing the labor dispute if the worker, or the worker's union, has contributed time or money, directly or through a special assessment:

- (a) to affect the outcome of the labor dispute;
- (b) to further the objectives of the strike; or
- (c) to provide aid or support to the union or workers participating in the strike.

(4) A worker is directly interested in the labor dispute if, immediately before the strike began, the worker:

(a) is of the same grade or class of workers as the workers participating in or financing the strike; and

(b) is employed at the same factory, establishment, or premises as the workers who are participating in or financing the strike.

(5) The factors enumerated in (2), (3), and (4) are not exhaustive. The department may consider factors not listed here to determine a worker's participation, financing, or direct interest in a labor dispute. The department's determination must be supported by a preponderance of the evidence and as a matter of law.

(6) If a state or federal agency, or court with jurisdiction, determines that the strike was based on the employer's unfair labor practice or other violation of law pertaining to hours, wages, or other conditions of work, a worker who was disqualified from benefits under this rule will become qualified on the Sunday of the week the determination of the employer's unlawful conduct is made.

(7) If no violation of law is found under (6), a worker who is disqualified from benefits under this rule will remain disqualified until the end of the week in which:

(a) the strike is abandoned, and the worker, or the worker's union, makes an unconditional offer to return to work; or

(b) there has been a complete and bona fide termination of the work relationship between the worker and the employer. The permanent replacement of a striking worker will be considered to constitute a complete and bona fide severance of the work relationship between the worker and the employer only upon a final determination by a state or federal agency or court with jurisdiction to make such a determination that the worker has no rights of reinstatement.

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

IMP: 39-51-2305, MCA

REASON: The proposed new rule is necessary because it replaces ARM 24.11.465A, and it removes language that is internally repetitive and duplicative of 39-51-2305, MCA. Section (6) is also updated to reflect that a worker becomes eligible for benefits the week of the determination of the employer's unlawful conduct, which is consistent with 39-51-2305(3), MCA, and other provisions restoring eligibility under these rules, such as NEW RULE XXV.

24.11.469 (24.40.XXX) DOMESTIC VIOLENCE INELIGIBILITY --
REQUALIFICATION (1) and (2) remain the same.

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

IMP: 39-51-2111, MCA

REASON: The proposed transfer of this rule is necessary because the department proposes transferring the entirety of UI program's rules from ARM Title 24, chapter 11 to a new subchapter in ARM Title 24, chapter 40, to aid in organization and clarity of the rules.

24.11.472 (24.40.XXX) PENSION BENEFIT REDUCTION ~~(1) For purposes of this rule, a "pension" means pension payments, retirement benefits, retirement pay, annuity, or similar periodic payment made to an individual based on previous work. Severance or separation pay is not a "pension" payment.~~

~~(2) The department shall reduce a claimant's weekly unemployment benefit by the amount claimant receives or constructively receives from a pension plan that was maintained or contributed to by a base period employer.~~

~~(3) When no base period employer contributed to claimant's pension plan, the department shall not reduce a claimant's weekly unemployment benefit by the pension payment.~~

~~(4)~~ (1) The department shall presume a claimant made no monetary contribution to claimant's pension plan. A claimant may overcome this presumption by providing written proof to the department demonstrating that the claimant made an actual monetary contribution to the pension plan. When a claimant made direct monetary contribution to the pension plan, the department shall not reduce a claimant's weekly unemployment benefit by the amount of the pension payment.

~~(5)~~ (2) ~~The claimant must promptly provide to the department all information requested by the department.~~ Within eight days of claimant's receipt of correspondence from the pension plan administrator concerning claimant's pension entitlement or the amount of claimant's pension payments, claimant must provide the department with copies of the correspondence.

(6) through (8) remain the same but are renumbered (3) through (5).

~~(9) Social security retirement and social security disability payments are not deductible from unemployment benefits under this rule.~~

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

IMP: 39-51-2203, MCA

REASON: This rule is amended to remove language that is duplicative of 39-51-2203, MCA. The definition of "pension" in (1) is transferred to ARM 24.11.204 DEFINITIONS.

NEW RULE XXXI (24.40.XXX) 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, certified and signed by a health care provider.

(2) The individual bears the burden of proof that work is not suitable.

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

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

REASON: The proposed new rule is necessary because it contains (4) and (5) of ARM 24.11.485, repealed below.

NEW RULE XXXII (24.40.XXX) SUITABLE WORK FOR EXTENDED

BENEFITS (1) If the department determines that a claimant who has exhausted regular benefits has a reasonable chance of securing employment during the four weeks after regular benefits are exhausted, "suitable work" is defined by the requirements in 39-51-2304, MCA.

(2) If the department determines that a claimant who has exhausted regular benefits does not have a reasonable chance of securing employment in the four weeks after regular benefits are exhausted, "suitable work" for purposes of extended benefits is defined as the requirements in 39-51-2304, MCA, and the following criteria:

(a) the gross average weekly wages for the work exceeds the claimant's extended weekly benefit amount, plus the amount of any supplemental unemployment benefits (as defined in 26 U.S.C. 501(c)(17)(D), as amended);

(b) the position does not pay less than the higher of:

(i) the federal minimum wage (29 U.S.C. 206, as amended); or

(ii) any applicable state or local minimum wage; and,

(c) the position was offered to the claimant in writing or was listed with an employment office.

(3) The department shall presume that a claimant does not have a reasonable chance of securing employment during the four weeks after regular benefits are exhausted. The department may change this presumption upon evidence of improved opportunities for employment.

(4) The department shall notify the claimant in writing of the determination of the claimant's reasonable chances of securing employment, and the department may change the determination if the department is provided with evidence of changed circumstances.

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

IMP: 39-51-2508, MCA

REASON: Section 39-51-2508(5), MCA, requires the department to adopt a definition of "suitable work" specifically for extended benefits in accordance with the requirements of 26 U.S.C. § 3304.

H. Subchapter 11: Fraud, Penalties, and Benefit Overpayments

NEW RULE XXXIII (24.40.XXX) FRAUD DETERMINATION - FALSE STATEMENT OR FAILURE TO DISCLOSE

(1) If the department identifies information indicating possible fraud, meaning the department has reason to believe a claimant may have made a false statement or representation or failed to disclose a material fact in order to obtain or increase benefits, the department shall investigate and adjudicate the issue pursuant to the procedures in [NEW RULE XXIII]. The

department shall apply the specific analysis below in (2) or (3) and (4) and (5) to any determination of fraud.

(2) The department may, in its sole discretion, make a redetermination of fraud for up to three years after the date of the claimant's original determination.

(3) A claimant will be determined to have made a false statement or representation knowing it to be false to obtain or increase benefits upon a finding that:

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

(b) the claimant, or the claimant's agent, knew that the statement or representation was false; and

(c) 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.

(4) A claimant will be determined to have knowingly failed to disclose a material fact to obtain or increase benefits upon a finding that:

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

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

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

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

(5) A determination or decision finding fraud under (3) or (4) must be supported by a preponderance of the evidence and specifically cite the evidence in support of each subsection.

(6) A determination or decision finding fraud under (3) or (4) shall impose the appropriate administrative penalty pursuant to [NEW RULE XXXIV].

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

IMP: 39-51-2402, 39-51-3201, MCA

REASON: The proposed new rule is necessary because it contains (1) through (3) of ARM 24.11.459. The new rule includes the three-year statutory deadline for a determination of fraud in 39-51-2402, MCA.

NEW RULE XXXIV (24.40.XXX) CALCULATION OF ADMINISTRATIVE PENALTY (1) The number of weeks of disqualification imposed pursuant to a determination of fraud under [NEW RULE XXXIII], is determined as follows:

(a) for each week the department determined a claimant made a false statement or representation or failed to disclose a material fact not involving a separation from employment, two weeks of disqualification are imposed;

(b) for each week the department determined a claimant made a false statement or representation or failed to disclose a material fact, involving a separation from employment, six weeks of disqualification are imposed;

(c) an additional eight weeks of disqualification are imposed for each determination or decision, dated within three years of the date of the department's determination under (a) or (b), that imposed a disqualification for any number of weeks; and

(d) any weeks of disqualification imposed as provided in (a) and/or (b) must be imposed for each determination and served consecutively, not concurrently.

(2) A week is counted as a week of disqualification only if:

(a) the claimant has filed a weekly payment request for the week;

(b) the claimant is otherwise eligible for and qualified to receive benefits for the week;

(c) the week has not been used to satisfy the waiting week requirement; and

(d) the maximum benefit amount for the benefit year in which the week begins has not been exhausted.

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

IMP: 39-51-3201, MCA

REASON: The proposed new rule is necessary because it contains (4) and (5) of ARM 24.11.459. The new rule simplifies the language and removes unnecessary statutory references.

NEW RULE XXXV (24.40.XXX) NOTICE OF BENEFIT OVERPAYMENT

(1) If any decision results in a benefit overpayment, the department shall provide the claimant with separate notice of the amount of benefit overpayment.

(2) When the department determines a benefit overpayment occurred pursuant to a determination of fraud under [NEW RULE XXXIII], the department shall add a penalty to the benefit overpayment.

(3) The separate benefit overpayment notice may be appealed only to challenge the accuracy of the amount of the benefit overpayment.

(4) Any benefit overpayment must be repaid to the department, regardless of the cause of the benefit overpayment, unless the department waives recovery of the benefit overpayment under [NEW RULE XXXVI] or [NEW RULE XXXVII].

(5) A benefit overpayment created when an interested party exercises their right to appeal a department determination or decision pursuant to these rules and Title 39, chapter 51, MCA, is a normal part of claim administration and is not eligible for a waiver.

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

IMP: 39-51-3206, MCA

REASON: The proposed new rule is necessary because it replaces and simplifies the substance of ARM 24.11.1205.

NEW RULE XXXVI (24.40.XXX) WAIVER OF OVERPAYMENT RECOVERY

(1) Once a decision that resulted in a benefit overpayment becomes final, a claimant may request that the department waive recovery of the benefit overpayment by writing or calling the department to request assistance.

(2) The department must deny waiver of benefit overpayment recovery that resulted from fraud pursuant to [NEW RULE XXXIII], or if a claimant is at fault by concealing or misrepresenting material facts. A claimant concealed or misrepresented material facts for purposes of this rule, even if unintentionally, in circumstances including, but not limited to, the following:

(a) before benefits were paid, the claimant failed to report or misrepresented a fact or circumstance regarding benefit eligibility or qualification;

(b) the claimant failed to read or respond to the department's requests for information, questions, or other communications that were necessary to determine the claimant's eligibility and qualification for benefits;

(c) the claimant failed to report or incorrectly reported a separation from employment while requesting benefits; or

(d) the claimant failed to report or incorrectly reported all hours and earnings from any insured employer during any week the claimant worked and requested benefits.

(3) The department may waive recovery of all or a portion of a benefit overpayment when a claimant meets the requirements of (1) and (2) and one or more of the following circumstances exist:

(a) benefit overpayment was the result of an incorrect monetary determination by the department due to minor errors in employer reporting;

(b) benefit overpayment resulted from department failure to consider relevant written documentation provided in a timely manner by a claimant, employer, or third party prior to the department's determination or redetermination;

(c) benefit overpayment resulted from claimant's reliance upon erroneous written information provided by department; or

(d) recovery of the benefit overpayment would cause a long-term financial hardship on the claimant pursuant to [NEW RULE XXXVII].

(4) Benefit overpayment does not constitute department error when the implementation of new state or federal law requires the department to revise a claimant's state benefit claim or monetary determination and to reduce or deny benefits retroactively.

(5) After consideration of a claimant's request for waiver, including a financial hardship waiver, the department shall notify the claimant of the waiver determination to grant or deny the request.

(6) Repayment of a benefit overpayment by offset of benefits shall continue until the department's waiver determination becomes final. If the waiver determination approves claimant's request for waiver, the department shall reimburse claimant for repayments collected after the date the claimant's written request for waiver was received by the department.

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

IMP: 39-51-3206, MCA

REASON: The proposed new rule is necessary because it contains the process for a claimant to request a waiver of recovery of benefits overpayments, transferred from (2), (3), (4), (6), and (8) of ARM 24.11.1207, repealed below.

NEW RULE XXXVII (24.40.XXX) FINANCIAL HARDSHIP WAIVER OF OVERPAYMENT RECOVERY

(1) In addition to the requirements for waiver in [NEW RULE XXXVI], a claimant may request the department waive recovery of the benefit overpayment based on the claimant's long-term financial hardship. The claimant may make the request using the online portal, or by calling the department to request a paper form.

(2) The claimant shall provide documentation of monthly household income, assets, and expenses as requested by the department. The department may request additional documentation or verification of any amounts or documents provided. The department may also disallow or adjust any claimed expenses that the department deems unreasonable.

(3) The department shall determine recovery of the benefit overpayment will cause a claimant long-term financial hardship when:

(a) the sum of the claimant's average monthly household cash flow and the net value of the claimant's household assets equals an amount less than the identified amount of the benefit overpayment; and

(b) no evidence demonstrates that the sum of claimant's average household monthly cash flow and net value of the claimant's household assets are likely to exceed the amount of the benefit overpayment within 12 months of the date of the claimant's request for waiver.

(4) If a claimant's request for waiver is denied, a claimant may submit a new request for waiver if the claimant's financial situation has significantly changed since the prior request was denied.

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

IMP: 39-51-3206, MCA

REASON: The proposed new rule is necessary because it contains requirements for requesting a financial hardship waiver of recovery of a benefits overpayment, transferred from (5) and (7) of ARM 24.11.1207, repealed below. Section (2) of the new rule gives the department discretion in determining what proof is required for a claimant to prove income and expenses, which replaces the specific list of documentation provided for in (1) of ARM 24.11.1207, repealed below.

I. Proposed Subchapter 12: Interstate Claims and Interstate Overpayment Recovery

NEW RULE XXXVIII (24.40.XXX) ADOPTION OF NASWA INTERSTATE CLAIM PROCESSING PROCEDURES

(1) Interstate claims are governed by the National Association of State Workforce Agencies (NASWA)'s Interstate Benefit Payment Plan of 1938, to which the department is a signatory, and the Interstate Arrangement for the Combining of Employment and Wages of 1971, 20 CFR § 616.

(2) NASWA maintains the Unemployment Insurance Interstate Connection Network (UI ICON) website so every state UI agency, including the department, can request and receive data for use in the filing and processing of combined wage claims, military, and federal claims. Each jurisdiction, including this state, is required

to keep their jurisdiction's UI claim processing information current on the UI ICON website.

(3) Information for processing interstate claims is available on the NASWA website, or by contacting the department.

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

IMP: 39-51-504, MCA

REASON: The proposed new rule is necessary because the processes and procedures for processing interstate claims are maintained online by NASWA, and it is duplicative to repeat those procedures in these rules. The new rule replaces ARM 24.11.511, 24.11.515, 24.11.516, 24.11.517, 24.11.518, 24.11.521, 24.11.523, 24.11.525, 24.11.531, and 24.11.534.

NEW RULE XXXIX (24.40.XXX) ADOPTION OF 2013 INTERSTATE RECIPROCAL OVERPAYMENT RECOVERY ARRANGEMENT (1) The department adopts by reference the National Association of State Workforce Agencies (NASWA) 2013 Interstate Reciprocal Overpayment Recovery Arrangement (IRORA), to which the department is a signatory, to govern the recovery of improper payments of state and federal unemployment insurance benefits. The department may recover improper benefit payments from individuals filing for benefits under the Interstate Benefit Payment Plan, the Interstate Arrangement for the Combining of Employment and Wages, or intrastate under any state's law.

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

IMP: 39-51-504, 39-51-3201, 39-51-3202, 39-51-3206, MCA

REASON: The proposed new rule is necessary because it adopts by reference the updated procedures for interstate recovery of benefit overpayments. The new rule replaces ARM 24.11.1221, 24.11.1225, 24.11.1228, and 24.11.1229, which were based on NASWA's 1987 Interstate Reciprocal Overpayment Recovery Arrangement. Because the procedures are adopted by reference, it is duplicative to repeat those procedures in these rules.

J. Proposed Subchapter 14: Employer Accounts

24.11.2005 (24.40.XXX) ESTABLISHING AN EMPLOYER'S UNEMPLOYMENT INSURANCE ACCOUNT (1) Every employer required to pay unemployment insurance tax must register for an employer account number on a form provided by the department. A new employer who has acquired the business of another employer must not use the predecessor's identification number. ~~Application for an employer account number is to be sent to the Unemployment Insurance Division, P.O. Box 6339, Helena, Montana 59604-6339.~~

(a) An employer is liable for reporting and paying unemployment insurance tax regardless of registration.

~~(2) Failure to properly register does not relieve an employer from reporting and remitting unemployment insurance tax.~~

(2) Professional employer organizations licensed under Title 39, chapter 8, MCA, and temporary service contractors as defined in 39-71-116, MCA, must identify themselves when establishing an account.

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

IMP: 39-51-1101, MCA

REASON: The proposed amendment to strike a portion of (1) is necessary to account for other means of establishing an employer account. Reasonable necessity exists to adopt new (2) to permit the repeal of ARM 24.11.2011, which is therefore unnecessary.

24.11.2007 (24.40.XXX) EMPLOYER ENTITY FORMS TYPES (1) remains the same.

~~(2) Legal entity forms include, but are not necessarily limited to a:~~

~~(a) sole proprietorship;~~

~~(b) partnership, pursuant to the provisions of Title 35, chapter 10, MCA;~~

~~(c) limited partnership, pursuant to Title 35, chapter 12, MCA;~~

~~(d) corporation, pursuant to Title 35, chapters 1 through 4 and chapter 9, MCA;~~

~~(e) member managed limited liability company, pursuant to Title 35, chapter 8, MCA;~~

~~(f) manager managed limited liability company, pursuant to Title 35, chapter 8, MCA;~~

~~(g) member managed limited liability partnership, pursuant to Title 35, chapter 10, MCA;~~

~~(h) manager managed limited liability partnership, pursuant to Title 35, chapter 10, MCA; and~~

~~(i) governmental unit.~~

~~(3) (2) An employer that attempts to form or operate as an entity other than a sole proprietorship will not be treated as such until the employer complies with Montana law regarding creation and/or maintenance of that entity form type. As an example, if two individuals intend to form a limited liability company but fail to properly do so, the individuals will be treated as partners for unemployment insurance purposes. In general, two or more individuals owning a business and functioning as an employer are deemed to be in a partnership and have joint and several liability for unpaid unemployment insurance contributions.~~

~~(4) (3) An employer that changes its legal entity form type must promptly report to the department the date of the change and identify its new entity form type.~~

~~(5) The department may require an employer to document its legal entity form.~~

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

IMP: 39-51-201, 39-51-603, MCA

REASON: The proposed amendment to strike (2) is necessary because it is not necessary to restate legal entity types in Montana, when such is already in statute. Necessity exists to strike portions of (3) because the rule is plain on its face, without the need for examples. Reasonable necessity exists to strike (4) because employer reports are required to the department by statute. References to employer "form" are proposed to be amended to refer to entity "type," so as to avoid confusion about a form for the collection of information versus a form of entity.

24.11.2015 (24.40.XXX) CLOSING AN EMPLOYER ACCOUNT (1) An employer that ceases all employment and reports no wages to the department for eight consecutive calendar quarters is removed from the department's record of active employers. ~~The department will notify the employer of that action.~~

(2) and (3) remain the same.

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

IMP: 39-51-204, 39-51-603, 39-51-1101, 39-51-1102, 39-51-1103, MCA

REASON: The proposed amendment to strike (1) is necessary because it sets forth a business process which need not be in rule.

K. Proposed Subchapter 15: Employer Charges and Tax Rates

24.11.613 (24.40.XXX) CHARGING BENEFIT PAYMENTS TO EXPERIENCE-RATED EMPLOYERS—CHARGEABLE EMPLOYERS ~~(1) Benefit payments are charged to each employer who paid wages to the claimant during the base period. The charge will be based on the percentage of wages the employer paid to the claimant during the base period. For example, if the claimant earned 10 percent of the base period wages working for an employer, that employer would be chargeable for 10 percent of the benefits drawn by the claimant.~~

~~(a) remains the same but is renumbered (1).~~

~~(b) The department's determination concerning a separation of employment from a base period employer, which subjects the claimant to possible disqualification under provisions of 39-51-2302, 39-51-2303, or 39-51-2305, MCA, will determine if that employer's account will be charged.~~

~~(2) An employer has not reduced hours or wages as used in 39-51-1214, MCA, if continued work was available for the same number of hours prior to the date the initial claim was filed as at the time of most recent hire. If the claimant was hired on a part-time basis with no guaranteed hours, no reduction has occurred unless the wages paid or the hours available in the four week period following the filing date of the claim are at least 10 percent less than the wages paid or hours available in the four-week period prior to the filing date of the claim. A reduction for salaried employees is based on a reduction in salary only, not on a reduction in hours. 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;~~

(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.

~~(3) When the first benefit check is issued, the department mails a "Potential Charge Notice" to the chargeable employer. This notice tells the employer that the benefits paid to the claimant will be charged to the employer's account unless the employer shows that the claimant was fired for misconduct or quit without good cause attributable to employment, pursuant to 39-51-2302 and 39-51-2303, MCA. The explanation of the separation must contain specific details of the separation, including copies of any supporting documents.~~

~~(a) As provided in 39-51-1214, MCA, the department reviews the information submitted by the employer and issues a determination notice stating whether the employer should be charged for the claimant's benefits.~~

~~(b) An employer has eight calendar days from the date of the notice to respond to the "Potential Charge Notice" and/or "Claim Filing and Potential Charge Notice." If an employer fails to show good cause for delay in responding to either notice, the employer forfeits the right to appeal the department's determination and waives the right to credit for any benefit overpayment that may result, in accordance with ARM 24.11.208.~~

~~(c) If the employer provides the department with information that justifies relief of charges, but the employer failed to provide separation information within the time limits of the notice, the department may not relieve the charges to the employer's experience-rated account.~~

~~(d) The employer may appeal the department's decision within ten days of mailing the determination as provided in 39-51-2402, MCA.~~

~~(4) Within 60 days of the end of each calendar quarter, the department mails to the employer a statement of benefits charged to the employer's account. This statement is the "Quarterly Statement of Benefits Paid" and is for informational purposes only since any appeal must be made from the "Potential Charge Notice" and shows:~~

~~(a) the claimant's name and social security number;~~

~~(b) the date on which the charges were effective; and~~

~~(c) the amount of benefits charged to the employer's account.~~

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

IMP: 39-51-1214, MCA

REASON: The proposed amendments to strike (1) and (1)(b) are necessary because they duplicate 39-51-1214, MCA. Amendment to (2) simplifies the rule. Striking reference to salaried employees is necessary because a salaried employee, by definition, does not have a required number of hours worked. As such, hours reduction could not be considered. Reasonable necessity exists to strike (3) because it sets forth a standard determination appeal rule, which is stated in other rules. Reasonable necessity exists to strike (4) because it sets forth a business process, which need not appear in rule.

24.11.2201 (24.40.XXX) EXPERIENCE-RATED EMPLOYERS (1) An experience-rated employer is a private employer whose contribution rate is based on the experience rating record of each business operated by the employer and the rate classification assigned to the employer under the contribution rate schedule.

(2) The contribution rate for each experience-rated employer is calculated by:

- (a) determining the employer's experience factor;
- (b) comparing that experience factor to the experience factors of all other employers; and
- (c) assigning the employer a rate classification within the contribution rate schedule.

(3) The experience factor as defined in 39-51-1213, MCA, is computed by subtracting the benefits charged to the employer's account since October 1, 1981, from the amount of contributions paid by the employer since October 1, 1981. This is the "reserve." The reserve is then divided by the average annual taxable payroll for the last three fiscal years. The resulting ratio is the experience factor, also known as the reserve ratio. The following equations show how the experience factor is calculated:

$$\text{Contributions paid} - \text{Benefit charges} = \text{Reserve}$$

$$\text{Reserve} / \text{Average taxable payroll} = \text{Experience Factor}$$

(a) Each experience-rated employer is assigned a rate classification on the contribution rate schedule depending upon the employer's experience factor.

(b) Experience-rated employers are divided into three categories: eligible, new, and deficit employers. Each category is defined in 39-51-1121, MCA.

(4) (1) On or before April 1 of each year, the department mails sends rate notices to employers. The type of notice depends upon whether the employer is:

- (a) an eligible employer;
- (b) a deficit employer;
- (c) a new employer; or
- (d) an employer with past due reports, taxes, penalties or interest.

(5) (2) Eligible employers and deficit employers who do not have delinquent accounts are sent a rate notice with the following information: used to calculate the applicable contribution rate.

- (a) employer's taxable wages from the three fiscal years immediately preceding the computation date;
- (b) amount of all contributions paid from October 1, 1981, through the computation date;
- (c) amount of benefits charged to the account since October 1, 1981, through the computation date;
- (d) average taxable wages for the last three fiscal years;
- (e) employer's reserve and reserve ratio;
- (f) tax rates for the current year; and
- (g) taxable wage base for the current year.

(6) (3) New employers who do not have delinquent accounts are sent a rate notice with the following information:

- ~~(a) tax rates for the current year; and~~
- ~~(b) taxable wage base for the current year.~~

~~(7) (4)~~ If all past due reports, taxes, penalties and interest are satisfied within 30 days of the ~~date of mailing~~ sending of the rate notice, the employer's deficit, eligible, or new computed contribution rate is reinstated. The department will send the employer a revised contribution rate notice.

~~(8) The rate notice is final unless the employer files a written request for a redetermination within 30 days of mailing the rate notice. The request for redetermination must explain why the employer believes the assigned contribution rate is incorrect.~~

~~(9) If, after redetermination, the employer still contests the contribution rate, the employer may appeal the department's decision under 39-51-2402, MCA.~~

~~(10) Beginning in the first quarter of 2008, an assessment in the amount of .13 or .18 percent of taxable wages, as provided by 39-51-404, MCA, must be paid by all experience-rated employers and deposited in the employment security account provided for in 39-51-409, MCA. The assessment amount is not considered as "contributions" for the purposes of 39-51-401, MCA, and for purposes of reporting on form 940 Employer's Annual Federal Unemployment (FUTA) Tax Return.~~

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

IMP: 39-51-301, 39-51-404, 39-51-1103, 39-51-1121, 39-51-1123, 39-51-1213, MCA

REASON: The proposed amendments to strike provisions in this rule are necessary because they duplicate statute. Changes are proposed to (4) and (7) to provide for alternative means of notice aside from regular mail.

NEW RULE XL (24.40.XXX) EMPLOYER REPORTING - SICK LEAVE OR ACCIDENT DISABILITY PAYMENTS AS WAGES (1) If the employer paid the premium for sick leave or accident disability insurance, any payments made to an employee under that insurance coverage are reportable as wages by the employer. The payments are reportable as wages for six months after the last calendar month in which the employee worked for such employer.

(2) The insurance company, or other third party, that made sick leave or accident disability payments to the employee assumes responsibility for reporting the wages to the department if the third party fails to give the following information to the employer within 15 days of the end of the calendar quarter in which the sick leave or accident disability payments were made to the employee:

- (a) name and social security number of the employee who received the payments; and
- (b) total amount of the payments.

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

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

REASON: The proposed new rule is necessary because it contains ARM 24.11.2501(2), repealed below, and the substance of this section is more logically located with employer tax rules rather than wage rules.

24.11.2204 (24.40.XXX) RATES FOR NEW EMPLOYERS (1) remains the same.

(2) A professional employer organization (PEO) licensed under Title 39, chapter 8, MCA, for the first calendar year of subjectivity is assigned the nonclassifiable rate for new employers. Thereafter, unless the PEO is experience-rated, the PEO is assigned a rate as a new employer in the industry in which the majority of ~~workers~~ employees are placed for the PEO's clients.

(a) The PEO must provide the department with the quarterly report and a list of ~~workers~~ employees showing which ~~workers~~ employees were assigned to which client. If the list is not provided, the PEO will be assigned the nonclassifiable rate for new employers for the following year.

(3) through (5) remain the same.

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

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

REASON: The proposed amendments to (2) and (2)(a) are necessary to specify that unemployment laws apply to employees, not the more general term "workers."

24.11.2205 (24.40.XXX) EXPERIENCE-RATING RECORD TRANSFER

~~(1) When a new business entity is formed and it acquires assets, employees, business, organization, or trade from another employer, the new business entity is classified as a successor employer. The procedures for transferring an employer's experience-rating record are described in 39-51-1219, MCA. For purposes of this rule, predecessor employer and successor employer are used in the same manner and have the same meaning as those terms have in 39-51-1219, MCA.~~

~~(2) Except as otherwise provided in this rule, an application for transferring the experience-rating record is automatically sent to the successor employer if, within 90 days of the change of ownership, the department discovers that an account involves a predecessor employer.~~

~~(3) An experience-rating record is automatically transferred from the predecessor employer to the successor employer if both employers are under substantially common ownership, management, or control. An experience-rating record includes the amount of contributions paid, benefits charged, and taxable wages reported.~~

~~(3)(a) through (3)(a)(viii) remain the same but are renumbered (1) through (1)(h).~~

~~(4) remains the same but is renumbered (2).~~

~~(5) In the case of partial transfer of the trade or business of an employing entity (referred to as the predecessor employer) to another entity (referred to as the successor), the portion of the experience-rating record transferred from the predecessor employer to the successor must be determined in the same ratio as:~~

~~(a) the portion of the payroll transferred to the successor in the current and the previous four calendar quarters immediately preceding the date of transfer; to (b) the total payroll of the predecessor employer would have had during that same period, had the transfer not occurred.~~

(6) and (7) remain the same but are renumbered (3) and (4).

AUTH: 39-8-201, 39-51-301, 39-51-302, MCA

IMP: 39-8-201, 39-51-1219, MCA

REASON: The proposed amendments are necessary because (1) duplicates statute, (2) sets forth a business process which need not be stated in rule, and (3) and (5) duplicate statute.

24.11.2208 (24.40.XXX) REACTIVATED EMPLOYER RATES (1) The department shall reactivate the unemployment insurance account of an employer who begins employing ~~workers~~ employees within five years from the last date of employment. The department shall assign the employer a contributions rate by taking into account the employer's prior experience rated record.

(a) and (b) remain the same.

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

IMP: 39-51-1121, 39-51-1206, 39-51-1216, MCA

REASON: The proposed amendment to (1) is necessary to specify that unemployment laws apply to employees, not the more general term "workers."

24.11.2221 (24.40.XXX) STATE AND LOCAL GOVERNMENT EXPERIENCE RATING (1) through (4) remain the same.

AUTH: 39-51-302, MCA

IMP: 39-51-404, 39-51-1212, MCA

REASON: The proposed transfer of this rule is necessary because the department proposes transferring the entirety of the UI program's rules from ARM Title 24, chapter 11 to a new subchapter in ARM Title 24, chapter 40, to aid in organization and clarity of the rules.

L. Proposed Subchapter 16: Employer Records, Reporting, and Payments

24.11.2701 (24.40.XXX) POSTING NOTICE TO ~~WORKERS~~ EMPLOYEES

(1) Every employer must post and maintain a printed notice provided by the department showing that the employer is subject to Montana unemployment insurance law and has been registered by the department. This notice must be posted in a conspicuous places near the locations where services are performed. ~~If employees do not work in a central location, the employer shall annually disseminate~~

the notice to all affected employees by mail or electronic means consistent with typical business practices for disseminating information to employees.

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

IMP: 39-51-1101, MCA

REASON: Notice of coverage by employers remains required by federal law. See 20 CFR Part 602, Appendix A, Section 6014. However, Montana's notice rule reasonably requires updating to reflect modern workforce trends, including remote employment. The rule is proposed to be broadened to permit multiple notice types, depending on employer worksite and employee work location.

24.11.2704 (24.40.XXX) RECORDS TO BE KEPT BY EMPLOYER

- (1) remains the same.
- (2) For each pay period, those records must show:
 - (a) remains the same.
 - (b) the total wages, ~~as defined in 39-51-201, MCA,~~ for employment in such pay period; and
 - (c) through (3)(c)(iv) remain the same.
 - (d) the date(s) the employee was hired, rehired, or returned to work employment after a temporary layoff;
 - (e) through (h) remain the same.
- (4) Employers must keep evidence of business ownership including, but not limited to, limited liability company and partnership agreements, share certificates, and documents issued or acknowledgments by the Secretary of State.
- (5) remains the same.
- ~~(6) The records and reports are open to periodic review by the department's authorized representatives.~~

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

IMP: 39-51-603, MCA

REASON: The rule is proposed to be amended to exclude an unnecessary statutory cross reference and to remove a statement of inherent departmental authority which is duplicative of statute. Section (4) is amended to specify additional documents used to prove business ownership.

24.11.2707 (24.40.XXX) REPORTING OF WAGES IN EXCESS OF TAXABLE WAGE BASE FOR CERTAIN EMPLOYERS (1) remains the same.

- ~~(2) All wages paid to an employee by an employer are reportable as total wages. Wages paid to an employee in any single calendar year by an employer, up to and including the annual taxable wage base as defined in 39-51-1108, MCA, for that calendar year, are taxable wages. All further wages paid to the employee by that employer in that calendar year are "excess wages" and not taxable.~~
- (3) remains the same but is renumbered (2).
- ~~(4) Prior to January 1, 2014, wages reported for an employee to another state may be used in calculating the employee's taxable wage in Montana.~~

(5) ~~(3)~~ Beginning January 1, 2014, only Only wages reported to the Montana unemployment insurance program may be used to calculate an employee's taxable wage in Montana.

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

IMP: 39-51-203, 39-51-1108, 39-51-1217, MCA

REASON: The proposed amendment to strike (2) is necessary because it is duplicative of statute. The proposed amendment to strike (4) is necessary because the time period is no longer applicable.

24.11.2711 (24.40.XXX) DUE DATE OF TAXES AND QUARTERLY REPORTS BY EMPLOYERS (1) through (6) remain the same.

~~(7) An employer or its agent must report wage information in a format prescribed by the department. All employers and third-party agents must report quarterly wage information in an electronic format approved by the department.~~

~~(a) An employer who reported wages for 20 or more employees in any quarter in the preceding calendar year and a third-party agent who reports on behalf of an employer must use an electronic format provided or approved by the department to file quarterly wage reports. Once an employer crosses the 20 or more employee threshold, all subsequent wage reporting must be electronic.~~

~~(b) An employer reporting 19 or fewer employees may file quarterly wage reports using a UI-5 form provided or approved by the department or by an electronic format provided or approved by the department.~~

~~(c) 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) remains the same.

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

IMP: 39-51-603, MCA

REASON: There is reasonable necessity to amend this rule to require the use of electronic means to file quarterly employer reports, regardless of employer size. This change recognizes departmental needs to receive and process reports efficiently as well as that current business processes in the private sector should permit this change to be made. The department will continue to receive payments by various means.

24.11.2715 (24.40.XXX) DUE DATE AND APPLICATION OF TAXES (1) and (2) remain the same.

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

IMP: 39-51-1103, 39-51-1110, MCA

REASON: The proposed transfer of this rule is necessary because the department proposes transferring the entirety of UI program's rules from ARM Title 24, chapter

11 to a new subchapter in ARM Title 24, chapter 40, to aid in organization and clarity of the rules.

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

24.11.101 DIVISION ORGANIZATION – LOCATION

AUTH: 2-4-201, 39-51-302, MCA

IMP: 2-4-201, 39-51-301, MCA

REASON: The proposed repeal of this rule is necessary because it is not necessary, nor is it an efficient means to convey the contact information of the unemployment insurance division to the public.

24.11.201 ADOPTION OF MODEL RULES

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

IMP: 2-4-204, 39-51-301, MCA

REASON: The proposed repeal of this rule is necessary because the department adopted the Attorney General's model rules in ARM 24.2.101, meaning the UI program is already subject to the model rules. The hearing procedures for the UI program are also contained in the new proposed Title 24, chapter 40, subchapter 2.

24.11.203 DETERMINATION OF EMPLOYMENT STATUS REGARDING INDEPENDENT CONTRACTORS

AUTH: 39-51-302, MCA

IMP: 39-51-201, 39-51-204, MCA

REASON: The proposed repeal of this rule is necessary because this rule is duplicative of ARM 24.11.2407 (24.40.XXX) EMPLOYEE STATUS - DETERMINATION OF INDEPENDENT CONTRACTORS – DEPARTMENT PROCEDURES. As a result of this duplication, confusion may arise.

24.11.206 TIME ALLOWED AND PROCEDURE FOR FILINGS AND SUBMISSIONS

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

IMP: 39-51-301, 39-51-603, 39-51-605, Title 39, chapter 51, parts 11 through 13, and 21 through 24, MCA

REASON: The proposed repeal of this rule is necessary because this rule is replaced in entirety by NEW RULE I.

24.11.207 INTERESTED PARTY

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

REASON: The proposed repeal of this rule is necessary because this rule is replaced in entirety by NEW RULE II.

24.11.208 EMPLOYER LOSS OF INTERESTED PARTY STATUS

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

IMP: 39-51-605, MCA

REASON: The proposed repeal of this rule is necessary because this rule is replaced in entirety by NEW RULE III.

24.11.210 CLAIMANT AGENT DESIGNATION

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

IMP: 39-51-3201, MCA

REASON: The proposed repeal of this rule is necessary because this rule is replaced in entirety by NEW RULE XXVIII.

24.11.315 APPEAL OF DEPARTMENT DETERMINATIONS

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

IMP: 2-4-201, 39-51-1109, 39-51-2402, 39-51-2407, MCA

REASON: The proposed repeal of this rule is necessary because the substance of (2) through (4) is contained in NEW RULE IV. Section (1) is repealed in its entirety because it is duplicative of 39-51-2402, MCA.

24.11.316 TRANSFER OF FILES TO OFFICE OF ADMINISTRATIVE HEARINGS

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

IMP: 39-51-1109, 39-51-2403, 39-51-2407, MCA

REASON: The proposed repeal of this rule is necessary because it purely sets forth a business operation for which no administrative rule is necessary. Certainly, after an appeal is received, the department will continue to transfer files for a case hearing. However, a rule to specify such transfer is not needed.

24.11.318 TELEPHONE HEARINGS

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

IMP: 39-51-1109, 39-51-2403, 39-51-2407, MCA

REASON: The proposed repeal of this rule is necessary because rule conflicts with statute to the extent it does not specify that hearings may be held via video conference. See 39-51-2407(2), MCA. In person hearings are exceptionally rarely requested. To the extent an individual requests an in person hearing as a reasonable accommodation for a disability or other good-cause reason, the hearing officer has sufficient inherent authority to consider and grant the decision as deemed in the best interest of the hearing. The provisions regarding tax hearing evidence and contact information are duplicative of ARM 24.11.325.

24.11.319 DISQUALIFICATION

AUTH: 39-51-302, MCA

IMP: 39-51-1109, 39-51-2403, 39-51-2407, MCA

REASON: There is reasonable necessity to repeal this rule because it is within the inherent authority of the hearing officer to recognize a need for disqualification and to consider motions for the same. The rule is not necessary.

24.11.320 HEARING PROCEDURE—BENEFIT DETERMINATIONS

AUTH: 39-51-302, MCA

IMP: 39-51-2407, MCA

REASON: The proposed repeal of this rule is necessary in favor of a simpler, shorter rule NEW RULE V, which vests authority to govern hearing proceedings with the appeals referee. Timelines for holding the hearing are proposed to be included in ARM 24.11.317 (24.40.XXX) BENEFITS HEARINGS NOTICE--TIMING.

24.11.325 PREHEARING CONFERENCE FOR TAX HEARINGS

AUTH: 39-51-302, MCA

IMP: 39-51-1109, 39-51-2403, MCA

REASON: The proposed repeal of this rule is necessary because the substance of the rule is transferred to a new, simpler rule NEW RULE VI.

24.11.326 DISCOVERY IN TAX HEARINGS

AUTH: 39-51-302, MCA

IMP: 39-51-1109, 39-51-2403, MCA

REASON: The proposed repeal of this rule is necessary because the appeals referee is authorized to determine the necessity and means of discovery pursuant to NEW RULE VI and the guiding principles of the Montana Rules of Civil Procedure are adopted by NEW RULE V.

24.11.327 MOTIONS IN TAX HEARINGS

AUTH: 39-51-302, MCA

IMP: 39-51-1109, 39-51-2403, MCA

REASON: The proposed repeal of this rule is necessary because the timing and scheduling of motions is within the discretion of the appeals referee pursuant to NEW RULE XV, and scheduling of motions is determined in the scheduling conference, pursuant to NEW RULE VI.

24.11.328 HEARING PROCEDURES--TAX DETERMINATIONS

AUTH: 39-51-302, MCA

IMP: 39-51-1109, 39-51-2403, MCA

REASON: The proposed repeal of this rule is necessary because the burden of proof in (1) is transferred to NEW RULE VI. The remaining substance of (1) through (4) is transferred to a simpler shorter rule NEW RULE V.

24.11.329 FAILURE TO APPEAR AT A TAX HEARING

AUTH: 39-51-302, MCA

IMP: 39-51-1109, 39-51-2403, MCA

REASON: The proposed repeal of this rule is necessary because the means of the hearing rest within the discretion of the appeals referee. To the extent that a matter is dismissed, the means of appeal is determined by 39-51-2403, MCA, and need not be restated in rule.

24.11.331 FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND ORDER

AUTH: 39-51-302, MCA

IMP: 39-51-1109, 39-51-2403, MCA

REASON: The proposed repeal of this rule is necessary because it is duplicative of 39-51-2403, MCA.

24.11.336 WITNESS FEES

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

IMP: 39-51-2407, MCA

REASON: The proposed repeal of this rule is necessary because its substantive provisions are proposed to be incorporated into 24.11.335 (24.40.XXX) SUBPOENAS.

24.11.337 APPEALS DECISIONS TO BE FILED

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

IMP: 2-4-302, 39-51-2407, MCA

REASON: The proposed repeal of this rule is necessary because it is duplicative of ARM 1.3.233 of the Attorney General's Model Rules, which has been adopted by the department in ARM 24.2.101.

24.11.441 CLAIMS FOR BENEFITS

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

REASON: The proposed repeal of this rule is necessary because this rule references outdated technology, and the sections are divided among new rules as follows: sections (1) and (2) are transferred in NEW RULE XVI. Sections (4) through (6) are transferred to NEW RULE XVII. Section (3) is repealed because it is unnecessary to provide a separate definition for when a claimant has established only monetary eligibility for a claim. The circumstances for initial monetary edibility for a claim are detailed in NEW RULE XIX.

24.11.442 INITIAL MONETARY DETERMINATION--WAGES—REVISIONS

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

IMP: 39-51-2105, 39-51-2201, 39-51-2202, 39-51-2203, 39-51-2204, MCA

REASON: The proposed repeal is necessary because (1), (2), (4), (7), and (8), of this rule are transferred to NEW RULE XIX. Sections (1)(a), (5), and (6) are transferred to NEW RULE XX. Section (3) is repealed in full because the department has determined it is more efficient to consistently credit wages to the quarters in which they were paid, rather than the quarters in which they were earned. Over the last five years, less than 50 claimants benefitted from being able to assign wages to quarters based on when wages were earned rather than paid. Furthermore, the department allows claimants to use an alternate base period based on when wages are paid to help a claimant qualify for benefits if the claimant is otherwise qualified. More claimants benefit from the use of the alternate base period to qualify for wages than ever benefitted from crediting wages as earned.

24.11.443 WEEKLY PAYMENT REQUESTS

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

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

REASON: The proposed repeal is necessary because this rule is replaced by NEW RULE XXI.

24.11.445 INACTIVE CLAIMS--REACTIVATING A CLAIM

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

IMP: 39-51-2103, 39-51-2104, 39-51-2401, MCA

REASON: The proposed repeal is necessary because this rule is replaced by NEW RULE XXVI.

24.11.450A NONMONETARY DETERMINATIONS AND REDETERMINATIONS

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

REASON: The proposed repeal is necessary because sections (1)-(7) are transferred to NEW RULE XXIII. Section (9) is repealed because the department determined that requiring all claimants to request a redetermination on every issue of benefit eligibility is not required by 39-51-2402, MCA, and the process rarely results in a change of the original determination, and removing the mandatory request for a redetermination will increase the efficiency of claim administration for all interested parties.

Sections (10) and (11) are repealed because the rules for requesting an appeal are transferred and consolidated into a new proposed subchapter, Subchapter 2: OAH Procedure.

A request for redetermination is now limited to the situations of restored eligibility and benefit requalification, which was previously Sections (8) and (12), now transferred to NEW RULE XXV.

24.11.452A ELIGIBILITY FOR BENEFITS

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

REASON: The proposed repeal is necessary because sections (1) through (5) are duplicative of statutes 39-51-2101, 39-51-2104, 39-51-2115, and 39-51-2304, MCA; section (6) is transferred to NEW RULE XXVII; sections (5)(c)(iv) and (7) are transferred to NEW RULE XXVIII; and section (8) is transferred to NEW RULE XV.

24.11.453A WORK SEARCH CONTACTS

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2104, 39-41-2115, 39-51-2304, MCA

REASON: The proposed repeal is necessary because this rule is replaced by NEW RULE XXII. The new rule removes language that is duplicative of ARM 24.11.475, and it removes references to repealed rules ARM 24.11.470 and ARM 24.11.471. Section (7) is repealed because it is duplicative of Subchapter 10 Benefit Overpayments.

24.11.454A LEAVING OR DISCHARGE FROM WORK

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2302, 39-51-2303, MCA

REASON: The proposed repeal is necessary because this rule is replaced by NEW RULES X through XXIII. Section (1) is transferred to NEW RULE X; section (2) is transferred to NEW RULE XI; section (3) is transferred to NEW RULE XII; and section (4) is transferred to NEW RULE XIII. Subsections (1)(a)(i) through (iv) regarding benefits of limited duration are repealed because this benefit is not required by state or federal law and only a small percentage of claimants qualify for benefits of limited duration. Of those claimants who qualify, most only receive one additional week of benefits. Most claimants give an employer two weeks' notice of leaving employment; therefore, of the claimants who qualify for benefits of limited duration, they only receive one additional week of benefits after observing the required waiting week.

24.11.455 REFUSAL OF WORK

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2304, MCA

REASON: The proposed repeal of this rule is necessary because it is duplicative of 39-51-2304, MCA.

24.11.456 VOLUNTARY LAYOFF

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2101, 39-51-2104, 39-51-2303, 39-51-2304, MCA

REASON: The proposed repeal is necessary because this rule is replaced by NEW RULE XIII.

24.11.459 ADMINISTRATIVE PENALTY

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-3201, MCA

REASON: The proposed repeal is necessary because (1) through (3) are transferred to NEW RULE XXXIII, and (4) and (5) are transferred to NEW RULE XXXIV.

24.11.464 BENEFITS BASED ON SERVICES IN EDUCATIONAL INSTITUTIONS AND EDUCATIONAL SERVICE AGENCIES

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2108, MCA

REASON: The proposed repeal is necessary because this rule is repealed and largely replaced by NEW RULE XXIX. Subsection (1)(c)(ii) regarding vacation or holiday breaks is repealed because it is duplicative of 39-51-2108(3), MCA. Subsection (1)(d) is repealed because "same capacity" is self-explanatory.

24.11.465A DISQUALIFICATION WHEN UNEMPLOYMENT DUE TO STRIKE

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2305, MCA

REASON: The proposed repeal is necessary because this rule is replaced in entirety by NEW RULE XXX.

24.11.470 QUALITY CONTROL

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

REASON: The proposed repeal of this rule is necessary because it is unnecessary and provides no specific guidance for the department's quality control program.

24.11.471 REEMPLOYMENT ELIGIBILITY PROGRAMS

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2104, 39-51-2304, MCA

REASON: The proposed repeal is necessary because this rule is duplicative of 39-51-2104, MCA.

24.11.476 ADDITIONAL TRAINING BENEFITS

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2116, MCA

REASON: The proposed repeal of this rule is necessary because it is largely duplicative of ARM 24.11.475. The sections of this rule that specifically address additional training benefits are amended into ARM 24.11.475.

24.11.481 DEFINITION OF SUITABLE WORK FOR EXTENDED BENEFITS
PURPOSES--CLASSIFICATION AND DETERMINATION OF JOB PROSPECTS

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2508, MCA

REASON: The proposed repeal is necessary because this rule is replaced by NEW RULE XXXII.

24.11.485 SUITABLE WORK

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2101, 39-51-2112, 39-51-2115, 39-51-2304, MCA

REASON: The proposed repeal is because necessary this rule is duplicative of 39-51-2304, MCA. Sections (4) and (5) are transferred to NEW RULE XXXI.

24.11.487 HOURS TYPICALLY WORKED

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2101, 39-51-2115, MCA

REASON: The proposed repeal is necessary because this rule is duplicative of 39-51-2101 and 39-51-2115, MCA.

24.11.490 LEAVE OF ABSENCE

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2112, MCA

REASON: The proposed repeal is necessary because this rule is duplicative of 39-51-2112, MCA.

24.11.491 SUSPENSION

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2101, 39-51-2113, 39-51-2202, 39-51-2402, MCA

REASON: The proposed repeal is necessary because this rule is duplicative of 39-51-2113, MCA.

24.11.511 SCOPE AND PURPOSE--MODEL LANGUAGE

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-504, MCA

24.11.515 NOTIFICATION OF INTERSTATE CLAIM

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-504, MCA

24.11.516 REGISTRATION FOR WORK

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-504, MCA

24.11.517 BENEFIT RIGHTS OF INTERSTATE CLAIMANT

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-504, MCA

24.11.518 CLAIMS FOR BENEFITS

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-504, MCA

24.11.521 PROVIDING ASSISTANCE TO INTERSTATE CLAIMANTS

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-504, MCA

24.11.523 ELIGIBILITY REVIEW PROGRAM

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-504, MCA

24.11.525 DETERMINATION OF CLAIMS

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-504, MCA

24.11.531 APPELLATE PROCEDURE

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-504, MCA

24.11.534 EXTENSION OF INTERSTATE BENEFIT PAYMENT PLAN TO
INCLUDE CLAIMS TAKEN IN AND FOR CANADA

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

IMP: 39-51-504, MCA

REASON: The proposed repeal of ARM 24.11.511, 24.11.515, 24.11.516, 24.11.517, 24.11.518, 24.11.521, 24.11.523, 24.11.525, 24.11.531, and 24.11.534 is necessary because the procedures contained in those rules are now adopted by reference in NEW RULE XXXVIII. The information for interstate claims process is readily available online and maintained by NASWA.

24.11.616 BENEFIT OVERPAYMENTS–CREDITING EMPLOYER ACCOUNTS

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-605, 39-51-1110, MCA

REASON: The proposed repeal of this rule is necessary because it restates statutory requirements in 39-51-605 and 39-51-1110, MCA.

24.11.617 RELIEF OF CHARGES TO EMPLOYERS

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-1214, 39-51-2111, 39-51-2116, 39-51-2302, 39-51-2303, MCA

REASON: The proposed repeal of this rule is necessary because it duplicates the requirements of 39-51-1214, MCA.

24.11.911 REQUESTS FOR INFORMATION

AUTH: 39-51-302, 39-51-603, MCA
IMP: 39-51-301, 39-51-303, 39-51-603, MCA

REASON: There is reasonable necessity to repeal this rule because it is unnecessary to publish in rule what may be more simply and easily conveyed by other means. The department takes care to ensure that its records are open to the public as required by the Montana Constitution. Record requests are fulfilled to the extent feasible no matter the means by which they are conveyed by a requester or received by the department. As a result, the rule is not necessary. Further, to the extent specificity with regard to requesting unemployment insurance information is required, those details are set forth in ARM 24.11.915.

24.11.1205 BENEFIT OVERPAYMENTS–NOTICES AND APPEAL RIGHTS

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-3206, MCA

REASON: The proposed repeal of this rule is necessary because this rule is replaced in its entirety by NEW RULE XXXV.

24.11.1207 WAIVER OF RECOVERY OF BENEFIT OVERPAYMENTS

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

IMP: 39-51-3206, MCA

REASON: The proposed repeal of this rule is necessary because the rule is replaced by shorter, cleaner rules. Section (1) is repealed because the department has discretion to request proof of a claimant's assets and expenses under (2) of NEW RULE XXXVII. Sections (2), (3), (4), (6), and (8) are transferred to NEW RULE XXXVI, and (5) and (7) are transferred to NEW RULE XXXVII.

24.11.1209 FRAUDULENT BENEFIT OVERPAYMENTS--ADMINISTRATIVE PENALTIES

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

IMP: 39-51-3201, 39-51-3202, 39-51-3203, 39-51-3206, MCA

REASON: The proposed repeal is necessary because this rule is duplicative of 39-51-3201, MCA.

24.11.1213 OFFER IN COMPROMISE

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

IMP: 39-51-3206, MCA

REASON: The proposed repeal is necessary because the requirement that an offer to pay back an overpayment debt must be over 50% of the amount due is duplicative of 39-51-3206, MCA, and the remaining substance of the rule sets contract terms that are within the discretion of the department. Specifying the contract terms in rule precludes the department from having flexibility to adjust an individual contract for repayment to the needs of an individual claimant. The department proposes repealing the rule in favor of drafting standard repayment contracts that meet the requirements of statute and can also be modified as needed.

24.11.1221 SCOPE AND PURPOSE--MODEL LANGUAGE

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

IMP: 39-51-504, 39-51-3201, 39-51-3202, 39-51-3206, MCA

REASON: The proposed repeal of ARM 24.11.1221, 24.11.1225, 24.11.1228, and 24.11.1229 is necessary because the rules are based on the 1987 Interstate Reciprocal Overpayment Recovery Arrangement, which is no longer in force, and the rules are replaced by NEW RULE XXXIX. The new rule adopts the updated 2013 procedure for interstate recovery of benefit overpayments by reference, and including the procedures in these rules is duplicative.

24.11.1225 RECOVERY OF STATE OR FEDERAL BENEFIT
OVERPAYMENTS

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-504, 39-51-3201, 39-51-3202, 39-51-3206, MCA

24.11.1228 COMBINED WAGE CLAIMS

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-504, 39-51-3201, 39-51-3202, 39-51-3206, MCA

24.11.1229 CROSS-PROGRAM OFFSET

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-504, 39-51-3201, 39-51-3202, 39-51-3206, MCA

24.11.2011 SPECIAL TYPES OF EMPLOYERS REQUIRED TO PROVIDE
ADDITIONAL INFORMATION WHEN REGISTERING

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-8-207, 39-51-201, 39-51-202, 39-51-302, MCA

REASON: The proposed repeal of this rule is necessary because the substance of the rule is proposed to be transferred to ARM 24.11.2005 (24.40.XXX) ESTABLISHING AN EMPLOYER'S UNEMPLOYMENT INSURANCE ACCOUNT, to simplify and shorten these rules for new employers.

24.11.2225 STATE, LOCAL GOVERNMENT, AND NONPROFIT
ORGANIZATIONS ELECTING REIMBURSABLE ACCOUNT

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-1124, 39-51-1125, 39-51-1126, MCA

REASON: The rule is duplicative of the statutes it purports to implement, and is therefore proposed to be repealed.

24.11.2401 IDENTIFICATION OF EMPLOYEES

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-603, MCA

REASON: The proposed repeal of this rule is necessary because it is duplicative of requirements set forth in statute and rule, most particularly, ARM 24.11.2704 (24.40.XXX) RECORDS TO BE KEPT BY EMPLOYER.

24.11.2403 DETERMINING EMPLOYEE STATUS

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-202, 39-51-203, 39-51-204, 39-51-603, MCA

REASON: The proposed repeal of this rule is necessary because it merely states the applicability of generally applicable laws—specifically the professional employer organization laws and the workers' compensation act. It further is duplicative of ARM 24.11.2407 (24.40.XXX) EMPLOYEE STATUS - DETERMINATION OF INDEPENDENT CONTRACTORS – DEPARTMENT PROCEDURES.

24.11.2411 STATUS OF CERTAIN FAMILY EMPLOYEES

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-203, 39-51-204, MCA

REASON: The proposed repeal of this rule is necessary because it is purely a restatement of 39-51-204, MCA.

24.11.2501 WAGES

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-201, 39-51-1103, MCA

REASON: The proposed repeal of this rule is necessary because (1)(a), (c), and (f) are duplicative of 39-51-201(25), MCA. Subsections (1)(b), (g), (h), and (i) are transferred to NEW RULE VII. Subsections (1)(d) and (e) are transferred to NEW RULE VIII. Section (2) is transferred to NEW RULE XL. Section (3) is repealed because the name to whom wages are designated may be material to an issue addressed pursuant to this chapter.

24.11.2511 PAYMENTS THAT ARE NOT WAGES--EMPLOYEE EXPENSES

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-201, 39-51-1103, MCA

REASON: The proposed repeal of this rule is necessary because the substance of the rule is transferred to NEW RULE IX.

24.11.2515 PAYMENTS THAT ARE NOT WAGES--JUROR FEES, INSURANCE PREMIUMS, ANNUITIES, DIRECTOR AND PARTNERSHIP FEES

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-201, 39-51-1103, MCA

REASON: The proposed repeal of this rule is necessary because (1), (4), and (6) are transferred to NEW RULE IX. Sections (2), (3), and (5) are repealed because they are duplicative of 39-51-201(25), MCA.

24.11.2801 RELEASING PROPERTY SUBJECT TO DEPARTMENT LIEN

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

IMP: 39-51-1304, MCA

REASON: The proposed repeal of this rule is necessary because it is duplicative of statutory authority vested in the department at Title 39, chapter 51, part 13, 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 or P.O. Box 1728; Helena, Montana 59624. Comments must be received no later than 5:00 p.m., April 19, 2024.

7. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and sosmt.gov/ARM/register.

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 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.

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. However, it is expected that by simplifying, clarifying, and streamlining the rules governing unemployment insurance, small businesses will be assisted in utilizing the rules.

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 March 12, 2024.