

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.11.2205 and 24.11.2711,) PROPOSED AMENDMENT AND
and the adoption of New Rule I,) ADOPTION
pertaining to unemployment)
insurance contributions)

TO: All Concerned Persons

1. On November 9, 2018, at 1:30 p.m., a public hearing will be held in the Lewis Room, in the basement of the Walt Sullivan Building, 1315 Lockey Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

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 November 5, 2018, to advise us of the nature of the accommodation that you need. Please contact Boris Karasch, Unemployment Insurance Division, 1315 Lockey Avenue, P.O. Box 1728, Helena, Montana 59624; telephone (406) 444-2646; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 444-2699; or via e-mail to BKarasch2@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: As required by 2-4-314, MCA, the Unemployment Insurance Division (division) of the department periodically reviews its administrative rules. The following rules are proposed for amendment to update and clarify various terms and procedures related to unemployment insurance benefit claims. The division handles approximately 130,000 unemployment insurance claims a year. The division monitors how the rules are applied and interpreted by agency staff, claimants, employers, and the various adjudicatory bodies that rule on disputed claims. The division concludes that the proposed amendments are reasonably necessary to improve the efficient and timely processing of claims, and to improve the understanding of employers, workers, and adjudicators, regarding the provisions of the rules. This general statement of reasonable necessity applies to all of the following rules. Additional statements of reasonable necessity are provided following specific rules where appropriate.

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

24.11.2205 EXPERIENCE-RATING RECORD TRANSFER (1) through (4)(b) remain the same.

(c) the successor employer files an employer registration form as provided in ARM 24.11.2005.

(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) The penalty assessed in 39-51-1219, MCA, is based on the taxable payroll of the successor following the transfer of the experience-rating record.

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

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

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

REASON: There is reasonable necessity to remove internal references, which will expedite administrative rulemaking in the future and decrease the number of erroneous internal references. Furthermore, there is a reasonable necessity to clarify the experience-rating ratio must be the same in the current and four preceding quarters. There is reasonable necessity to put the department's current practice into rule. Further, there is a reasonable necessity to clarify how the penalty assessed in 39-51-1219, MCA, is based.

24.11.2711 DUE DATE OF TAXES AND QUARTERLY REPORTS BY EMPLOYERS (1) Every employer must report employee wage information and pay taxes on those wages to the department each quarter on an approved quarterly report form. The department may request any information from the employer necessary for the collection of the tax.

~~(2) All employers must complete and return this form even if the An employer did who does not pay any wages during the a calendar quarter is not relieved of the duty to submit a quarterly wage report.~~

(3) remains the same.

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

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

(5) If a due date falls on a weekend or holiday, the next business day becomes the due date ~~the quarterly reports and tax payment must be postmarked.~~

(6) If a tax payment or quarterly report is postmarked sent after the due date, the department may assess a penalty and interest.

(7) An employer or its agent must report wage information in a format prescribed 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 wage reports filed in other than the prescribed format as untimely and subject the employer to a late filing penalty, pursuant to 39-51-1301, MCA.

(8) A tax payment may be made by:

(a) cash, check, or money order, accompanied by a department-approved payment voucher;

(b) automated clearing house (ACH) debit;

(c) ACH credit; or

(d) credit card.

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

IMP: 39-51-603, MCA

REASON: There is reasonable necessity to amend this rule to clarify the due dates and procedures for filing quarterly wage reports. Further, there is a reasonable necessity to require employers of 20 or more employees to file electronically because electronic filing is more efficient for both the department and the employer. The proposed amendments are reasonably necessary in order to make the procedures explained by the rule consistent with and supportive of employers' increasing use of electronic reporting and payment processes.

5. The rule proposed for adoption is as follows:

NEW RULE I STATUS OF CERTAIN FAMILY EMPLOYEES (1) As provided in 39-51-204, MCA, service performed by any of the following is excluded from the definition of employment:

(a) a sole proprietor's spouse;

(b) a sole proprietor's dependent; or

(c) a dependent who is claimed as an exemption under 26 U.S.C. 152 by a person who is in partnership with their spouse.

(2) Service performed by a dependent of one partner in a partnership who cannot be claimed as a dependent by all partners in a partnership under 26 U.S.C. 152 is included in the definition of employment.

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

IMP: 39-51-203, 39-51-204, MCA

REASON: There is reasonable necessity to create a new rule which clarifies when a spouse or dependent is exempt under federal law in order to make the application of the exemption provisions clearer for employers and others who prepare the quarterly wage reports. Furthermore, there is a reasonable necessity for these proposed changes because they will bring the department's rules more clearly in conformity with federal law.

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Boris Karasch, Unemployment Insurance Division, 1315 Lockett Avenue, P.O. Box 1728, Helena, Montana 59624; facsimile (406) 444-2699; or BKarasch2@mt.gov., and must be received no later than 5:00 p.m., November 16, 2018.

7. An electronic copy of this notice of public hearing is available through the department's web site at <http://dli.mt.gov/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings Section. The department strives to make its electronic copy of this notice of public hearing conform to the official version of the notice, as published in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy, only the official text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices, and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1315 E. Lockett Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

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

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

11. The Office of Administrative Hearings has been designated to preside over and conduct this hearing.

/s/ Mark Cadwallader
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State October 9, 2018.