

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

In the matter of the adoption of New Rule I pertaining to unemployment insurance benefits related to the COVID-19 pandemic ) NOTICE OF ADOPTION  
)  
)  
)

TO: All Concerned Persons

1. On July 10, 2020, the Department of Labor and Industry (department) published MAR Notice No. 24-11-360 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 1264 of the 2020 Montana Administrative Register, Issue Number 13.

2. The department held a public hearing in Helena on July 31, 2020, over the Zoom videoconference and telephonic platform at which no members of the public commented. Written comments were received during the public comment period.

3. The department has thoroughly considered the comments made. A summary of the comments and the department's response are as follows:

COMMENT 1: A commenter stated that it favored proposed NEW RULE I, and suggested modifications to the rule as noted below.

RESPONSE 1: The department acknowledges the comment.

COMMENT 2: A commenter suggested that pursuant to the provisions of the Coronavirus Aid, Relief and Economic Security Act (CARES Act), the department should continue to waive the one week waiting period for claims, in order to blunt the economic hardship suffered by a claimant who is unemployed as a result of the COVID-19 pandemic.

RESPONSE 2: Because Section 2105 of the CARES Act provides for full federal funding of benefits paid by a state that waives the waiting week, and that waiver of the waiting week furthers the public policy of minimizing the economic insecurity caused by involuntary unemployment expressed by 39-51-102, MCA, the department agrees that it is appropriate to continue to waive the waiting week. If the waiting week waiver provision of the CARES Act, set to expire at the end of December 2020, has not been replaced or supplemented by subsequent similar federal legislation, and the COVID-19 pandemic emergency has not ended, the department will timely amend NEW RULE I to remove the waiting week waiver. The department amends NEW RULE I accordingly, as showing in paragraph 4 below.

COMMENT 3: A commenter suggested that, in the way that work search requirements were modified while temporary emergency unemployment insurance rules were in place, the regular work search be waived or otherwise deemed

satisfied without requiring Montanans to interact in person with potential employers. The commenter stated that many low-wage jobs do not offer online recruiting, and that because of the recent record increases in COVID-19 infections, in-person work searches jeopardize the health and safety of Montana workers and employers.

RESPONSE 3: The department acknowledges that since the time NEW RULE I was drafted and filed with the Secretary of State's office, Montana has experienced a significant increase in daily new case counts and case distribution in COVID-19 infections, hospitalizations, and deaths. The effect of the pandemic on public health and safety is persistent and ongoing. Further, previous to the emergency, there were, on average, three to four job openings per individual on unemployment insurance. At this time, that ratio has reversed and there are roughly three to four individuals on unemployment for every job opening. The department agrees that as a means of protecting the public health, safety, and welfare during the COVID-19 pandemic, work search requirements should be temporarily excused so as to minimize the risk of transmission between claimants, employers, and other persons in a workplace. At the same time, the department wishes to emphasize that under the terms of Montana's unemployment insurance laws, a claimant cannot refuse suitable work that can be performed in a manner consistent with the Governor's declarations and directives. The department amends NEW RULE I accordingly, as showing in paragraph 4 below.

COMMENT 4: A commenter suggested that the department amend NEW RULE I to provide for a waiver of charges for benefits paid with respect to weeks of unemployment that begin on or after July 12, 2020.

RESPONSE 4: The unemployment insurance system is designed to be supported by employer contributions (payroll taxes). In the absence of an assured source of other funding, the department has an obligation to continue to collect those contributions in a manner which will appropriately fund Montana's unemployment insurance trust fund. Now that peak unemployment has passed, the department concludes that the most equitable method of funding Montana's unemployment insurance program is to resume and continue with benefits charging as has been the basis for program operation. However, because the charging is set on a claim on the initial filing of a claim, this will only apply to newly filed claims. Any existing claims filed since the beginning of the emergency will not be charged to the employer.

4. The department has adopted New Rule I (24.11.478) with the following changes, new matter underlined, deleted matter interlined:

NEW RULE I (ARM 24.11.478) COVID-19 CLAIMS FOR UNEMPLOYMENT INSURANCE BENEFITS FOR WEEKS OF UNEMPLOYMENT BEGINNING ON OR AFTER JULY 12, 2020 (1) through (6) remain as proposed.

(a) Specifically, claimants are advised that they will not be eligible for benefits if:

(i) they refuse to return to work when requested by the employer and suitable work can be performed in compliance with the emergency declarations and directives; or

(ii) they refuse to accept suitable work for which the claimant applies or is offered if that work can be performed in compliance with the emergency declarations and directives.

(7) Only during the duration of the emergency declarations and directives related to the COVID-19 pandemic issued by the Governor, the following apply:

(a) Regarding ARM 24.11.447, the registration and active status requirements are deemed to be fulfilled if the claimant has an account registered with MontanaWorks.com or, if filing over the phone or on paper, the department has established an account for the claimant.

(b) Regarding ARM 24.11.452A(4), a claimant is temporarily considered to be actively seeking work as long as the claimant is registered under (7)(a) of this rule.

(c) Regarding ARM 24.11.453A, a claimant is temporarily excused from the work search contact requirements of this rule in order to protect the public health, safety, and welfare.

(8) A claimant who is otherwise eligible for benefits pursuant to this rule is deemed to have fulfilled the waiting period as of the date the temporary layoff is effective.

(7) and (8) remain as proposed but are renumbered (9) and (10).

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

IMP: 39-51-102, 39-51-301, 39-51-501, MCA

/s/ Mark Cadwallader  
Mark Cadwallader  
Alternate Rule Reviewer

/s/ Brenda Nordlund  
Brenda Nordlund, Acting Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State August 18, 2020.