

BEFORE THE UNEMPLOYMENT INSURANCE APPEALS BOARD
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)
ARM 24.7.303, 24.7.304, 24.7.305,)
24.7.306, 24.7.308, 24.7.312, and the)
repeal of ARM 24.7.201, 24.7.301,)
24.7.309, 24.7.311, 24.7.313,)
24.7.315, 24.7.316, and 24.7.320)
pertaining to the Unemployment)
Insurance Appeals Board)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT AND
REPEAL

TO: All Concerned Persons

1. On December 21, 2021, at 1:00 p.m., the Department of Labor and Industry (department) will hold a public hearing via remote conferencing to consider the proposed amendment and repeal of 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/84881727442>, Meeting ID: 848 8172 7442; or
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656, Meeting ID: 848 8172 7442.

The hearing will begin with a brief introduction by department staff to explain the use of the videoconference and telephonic platform. All participants will be muted except when it is their time to speak.

2. The 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 December 14, 2021, to advise us of the nature of the accommodation that you need. Please contact Tiffany Gilbert, Unemployment Insurance, P.O. Box 8020, Helena, Montana 59624-8020; telephone (406) 444-3311; facsimile (406) 444-2699; Montana TTD (406) 444-5549; or e-mail uiappealsboard@mt.gov.

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

24.7.303 DEFINITIONS (1) The board incorporates by reference and adopts all applicable definitions set forth in ARM Title 24, chapter 11 and Title 39, chapter 51, MCA, unless context or a particular rule provides otherwise.

~~(1) "Administrator" means the administrator of the Unemployment Insurance Division of the Department of Labor and Industry.~~

~~(2) "Claimant" means an applicant for unemployment benefits.~~

~~(3) "Good cause" means reasonably compelling circumstances which did not result from any act or omission on the part of the person claiming good cause and which could not be overcome by reasonable diligence on the part of the person.~~

~~(4) "Hearing officer" means the impartial salaried appeal referee designated to hear and decide the disputed claim in a contested case proceeding.~~

~~(5) "Respondent" means a nonappealing party.~~

AUTH: 2-4-201, MCA

IMP: 2-4-201, 39-51-1109, 39-51-2404, MCA

REASON: Reasonable necessity exists to strike the definition of "administrator" because the term is not used in these rules. The remaining definitions are stricken because those definitions, for purposes of conformity and consistency, are adopted from those unemployment insurance definitions set forth in ARM Title 24, chapter 11 and the Montana Code Annotated.

24.7.304 RIGHT TO APPEAL FILINGS WITH THE BOARD ~~(1) Any interested party dissatisfied with a decision made by a hearing officer is entitled to appeal to the board in accordance with the provisions of 39-51-2404, MCA.~~

(1) Any document required by or permitted to be filed with the board may be filed in hard copy, by e-mail, or by telephonic facsimile (fax), and addressed to the board as follows:

(a) hard copy filings may be mailed to P.O. Box 8020, Helena, MT 59624-8020 or hand delivered to 1315 Lockey Ave, Helena, MT 59601;

(b) fax filings may be transmitted to (406) 444-2699. Documents which are longer than twenty pages, inclusive of attachments and exhibits, may not be filed by fax;

(c) e-mail filings may be transmitted to uiappealsboard@mt.gov.

~~(2) The address and contact number for the board are as follows:~~

~~Unemployment Insurance Appeals Board~~

~~Montana Department of Labor and Industry~~

~~1315 Lockey Street~~

~~P.O. Box 1728~~

~~Helena, MT 59624-1728~~

~~Fax: (406) 444-2699~~

~~TTY/TTD: (406) 444-0532~~

~~Telephone: (406) 444-3311~~

(2) A document is filed, no matter how it is transmitted, on the date it is received by the board, not the date it is transmitted. It is the responsibility of the filing party to ensure that the documents are received timely by the board.

~~(3) Interested parties appealing to the board from a decision of a hearing officer must file with the board within the time provided by law a notice of appeal. The board may accept an appeal made after the time allowed if the board determines there is good cause to do so.~~

~~(4) An interested party's notice of appeal should set forth errors of the hearing officer and the issues that will be raised on appeal.~~

~~(5) Upon scheduling of an appeal, the board shall give interested parties written notice of the date, time, and place of the board review, and such notice shall be mailed to such parties at least ten days prior to the date of the board's review.~~

AUTH: 2-4-201, MCA

IMP: 2-4-201, 39-51-1109, 39-51-2404, 39-51-2407, MCA

REASON: Reasonable necessity exists to amend the rule to clarify the forms of filing accepted by the board. Section (1) of the current rule is proposed to be stricken because it is duplicative of statute. Sections (3) through (5) of the current rule are proposed to be stricken because their substance will be transferred to a different rule for clarity and consistency of board rules as a whole.

24.7.305 BOARD REVIEW PROCEDURE (1) The board review on an appeal of ~~an appeals referee's a hearing officer's~~ decision shall be conducted informally, and in such manner as to ascertain the substantial rights of the parties. Review is initiated by filing a notice of appeal with the board.

(a) A notice of appeal should set forth all errors of the appeals referee's decision.

(b) All issues relevant to an appeal shall be considered and passed upon by the board.

(2) After receiving a notice of appeal, the board will issue written notice of the date, time, and place of the board review. The notice will be mailed to the parties at least ten days prior to the board's review.

~~(2) The board may review written argument and hear oral argument from any interested party concerning the findings of fact and the conclusions of law reached by the hearing officer. The board does not hear cross-examination by any opposing interested parties and any new material introduced for the board review must be introduced in accordance with ARM 24.7.312.~~

(3) An interested party to an appeal before the board may appear at any proceeding held in such appeal, either on the party's own behalf, by an attorney at law, or through an authorized lay representative as prescribed by (4). Lay representatives may not be paid for the representation unless they are employed by the claimant's labor union or are an employee of the employer receiving regular wages for the representation.

~~(4) Authorized lay representatives may be permitted to appear in proceedings before the board on behalf of interested parties so long as the lay representative does not charge a fee to represent the interested party's interests and is not otherwise compensated for representation except:~~

~~(a) A claimant may be represented by a person employed by the claimant's labor union if the person's duties include handling unemployment insurance matters for the union;~~

~~(b) An employer may be represented by:~~

~~(i) an employee of the employing unit or the owner of that employing unit as long as employee's or owner's typical duties include handling unemployment insurance matters for the employing unit and the employee or owner is not receiving separate remuneration; or~~

~~(ii) a person employed by a not-for-profit organization to which an employing unit pays a membership due or fee; and~~

~~(c) The department may be represented by an employee of the department.~~

(5) and (6) remain the same but are renumbered (4) and (5).

AUTH: 2-4-201, MCA

IMP: 2-4-201, 39-51-1109, 39-51-2404, 39-51-2407, MCA

REASON: Reasonable necessity exists to amend this rule to simplify and clarify procedures for review by the board. Proposed (2) sets forth language proposed to be removed from ARM 24.7.304(5) so that all review procedure is consolidated. Current (2) is proposed to be removed because it is duplicative of ARM 24.7.306. Section (4) is proposed to be removed to shorten and simplify the administrative rules.

24.7.306 DETERMINATION OF APPEALS (1) The department shall transmit to the board all records that are pertinent to the appeal, including documents not admitted into the record by the appeals referee hearing officer. The board will consider such records or portions of those records as the board deems appropriate. As soon as possible after the hearing, the board will decide whether to reverse, modify, or affirm the decision of the appeals referee hearing officer. Written notice of the board's action will be sent to all interested parties.

(2) The board will review the appeals referee's hearing officer's decision for errors of law or fact. In making its determination, the board will consider the record transmitted on appeal, written or oral arguments, as well as any new material admitted pursuant to ARM 24.7.312.

(3) If ~~the appealing a~~ party fails to appear at the board proceeding and no good cause for continuance is shown, the board shall render its decision on the basis of the record, written argument submitted, and argument of parties in attendance. ~~If the decision on appeal to the board is based on the best evidence available pursuant to ARM 24.11.320, the board may render its decision based on the best available evidence.~~

(4) Inability of the board to achieve a favorable vote regarding an appeal results in affirming the decision of the appeals referee.

AUTH: 2-4-201, MCA

IMP: 2-4-201, 39-51-310, 39-51-1109, 39-51-2404, 39-51-2407, MCA

REASON: Reasonable necessity exists to utilize the term "appeals referee" because it is the statutory language utilized throughout Title 39, chapter 51, MCA. These amendments do not constitute a substantive amendment, nor need they require modification to informal references to the individual who determines benefit eligibility during contested case hearings. Section (4) incorporates and simplifies the requirements of ARM 24.7.320, which is proposed to be repealed, for instances where a majority decision is unable to be reached.

24.7.308 CHALLENGES, BOARD MEMBER DISQUALIFICATIONS (1) No member of the board shall participate in the review proceeding of any appeal in which ~~he~~ the member has an interest nor shall any such member appeal in which ~~he~~ the member has an interest nor shall any such member represent any interested party or witness at any board proceeding.

(2) Any interested party may challenge any member of the board in writing, by filing with the board a motion, supported by affidavit, made in good faith, of personal bias, lack of independence, disqualification by law, or other ground of disqualification allowed by law. The motion must be filed five days prior to any related scheduled board action served upon the chairman of the board, five days in advance of any scheduled board proceeding stating the reasons therefore, and if the board shall find merit in the challenge, it shall disqualify the challenged member and appoint the substitute member to hear the appeal if it deems such appointment advisable. Following the filing of such motion and a reasonable period of time for an opposing party to comment upon it, the board shall either enter an order of recusal or decline the member's disqualification.

AUTH: 2-4-201, MCA
IMP: 2-4-201, 2-15-1704, MCA

REASON: Reasonable necessity exists to modify the rule's catchphrase to clarify the purpose of the rule as relating to board members, rather than benefits. The rule is proposed to be split into two parts. Section (1) now addresses the obligation of board members to recuse in matters when there is a conflict of interest. Section (1) is further proposed to be amended to make it gender neutral. Section (2) now addresses the procedure for requesting board member disqualification.

24.7.312 NEW MATERIAL BEFORE THE BOARD (1) All new material sought to be introduced at the board proceeding must be filed and served on all other parties ~~mailed or delivered to the board administrative assistant and all other parties~~ no later than five business days prior to the scheduled board proceeding or the material will not be considered by the board.

(2) and (3) remain the same.

(4) If the board finds that additional evidence is required to reach a decision, it may remand the matter to the ~~hearing officer~~ appeals referee to conduct a hearing to obtain additional evidence in the matter. The board shall promptly notify the interested parties of such action. The ~~hearing officer~~ appeals referee must make a new decision based on the additional evidence and the existing record.

AUTH: 2-4-201, MCA
IMP: 2-4-201, 39-51-2404, 39-51-2407, MCA

REASON: Reasonable necessity exists to amend this rule to clarify procedures to submission of new material before the board.

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

24.7.201 ADOPTION OF MODEL RULES

AUTH: 2-4-201, MCA
IMP: 2-4-201, MCA

REASON: The rule is proposed to be repealed because its adopted references are no longer accurate based on changes within other parts of the administrative rules. Further, the rules consider contested case proceedings, which do not occur before the board. As such, the rule is unnecessary.

24.7.301 POLICY

AUTH: 2-4-201, MCA
IMP: 2-4-201, 39-51-1109, 39-51-2404, 39-51-2407, MCA

REASON: The rule is proposed to be repealed because the policy of the unemployment insurance program is set forth in the Montana Code Annotated and need not be restated in rule. Further, to the extent the rule may have been interpreted as setting forth substantive language, its location is confusing.

24.7.309 APPEALS DECISIONS TO BE FILED

AUTH: 2-4-103, MCA
IMP: 2-4-103, MCA

REASON: The rule is proposed to be repealed because it is archaic and no longer necessary. Decisions of the board, absent express order to the contrary and personally identifying highly confidential information (such as social security numbers), are public documents subject to public review pursuant to the Montana Constitution.

24.7.311 BENEFIT APPEAL NOTICE

AUTH: 2-4-201, MCA
IMP: 2-4-201, MCA

REASON: The rule is proposed to be repealed because it is no longer necessary. The board intends to continue listing appeal rights on administrative decisions. Nonetheless, it is the obligation of the parties to know their rights of appeal, if any.

24.7.313 OFFICIAL NOTICE

AUTH: 2-4-201, MCA
IMP: 2-4-201, MCA

REASON: The rule is proposed to be repealed because it is not necessary to the board's consideration. Because the board is tasked with carrying out substantial

justice and based on a review of the record before it, as well as with an opportunity to admit new evidence, express reference to official notice pursuant to the Montana Rules of Evidence is duplicative.

24.7.315 STANDARDS AND PROCEDURES FOR RECONSIDERATION OF DECISIONS

AUTH: 2-4-201, MCA

IMP: 2-4-201, 39-51-1109, 39-51-2404, 39-51-2407, MCA

REASON: The rule is proposed to be repealed because reconsideration has not been utilized by the board for a number of years. Parties dissatisfied with the result before the board may appeal to District Court, without necessity of further consideration by the board.

24.7.316 INTERESTED PARTY

AUTH: 2-4-201, MCA

IMP: 2-4-201, 39-51-1109, 39-51-2404, MCA

REASON: The rule is proposed to be repealed because it is nearly identical to the definition of "interested party" set forth in ARM Title 24, chapter 11. Because those definitions are proposed to be directly adopted by changes proposed here, this rule is no longer necessary.

24.7.320 SUBSTITUTE BOARD MEMBER

AUTH: 2-4-201, MCA

IMP: 2-15-124, 2-15-1704, 39-51-301, 39-51-2405, MCA

REASON: The rule is proposed to be repealed because it is confusingly worded. To the extent it is necessary, ARM 24.7.306(4), currently proposed, incorporates its explanation of procedure as to what happens when a majority of the board is unable to reach a decision.

5. 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 Tiffany Gilbert, Unemployment Insurance, P.O. Box 8020, Helena, Montana 59624-8020; telephone (406) 444-3311; facsimile (406) 444-2699; Montana TTD (406) 444-5549; or e-mail uiappealsboard@mt.gov. Comments must be received no later than December 21, 2021, at 5:00 p.m.

6. 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 contact person in paragraph 2 above or may be made by completing a request form at any rules hearing held by the agency.

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

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

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

/s/ LAURA FIX

Laura Fix, Chair

UNEMPLOYMENT INSURANCE APPEALS
BOARD

/s/ QUINLAN L. O'CONNOR

Quinlan L. O'Connor

Alternate Rule Reviewer

/s/ LAURIE ESAU

Laurie Esau, Commissioner

DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State November 9, 2021.