

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.11.463 pertaining to) PROPOSED AMENDMENT
disqualification for unemployment)
insurance benefits due to failure or)
refusal of a drug test, and)
requalification)

TO: All Concerned Persons

1. On September 21, 2021, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rule. 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/81512378050>, meeting ID: 81512378050;

-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656, meeting ID: 81512378050.

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 September 14, 2021, to advise us of the nature of the accommodation that you need. Please contact Boris I. Karasch, Department of Labor and Industry, P.O. Box 8020, Helena, Montana, 59604-8020; telephone (406) 444-4676; fax (406) 444-2699; Montana Relay 711; or e-mail bkarasch2@mt.gov.

3. The department proposes the amendment of the following rule, stricken matter interlined, new matter underlined:

24.11.463 LIE DETECTOR TESTS–DRUG AND ALCOHOL TESTING

(1) remains the same.

(2) A claimant ~~will not~~ 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 50, chapter 46, part 3, MCA.

(3) An individual disqualified for benefits in accordance with (2) remains disqualified until the individual has performed services:

(a) for which remuneration is received equal to or in excess of eight times the individual's weekly benefit amount subsequent to the week in which the act causing the disqualification occurred; and

(b) that constitute employment as defined in 39-51-203 and 39-51-204, MCA.
(3) remains the same but is renumbered (4).

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

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

REASON: There is a reasonable necessity to amend this rule to account for changes implemented by Chapter 555, Laws of 2021 (House Bill 655). The amendment clarifies that an individual who is disqualified under the scope of this bill can requalify for benefits by earning an adequate amount of wages in covered employment. This amendment ensures Montana remains compliant with the proscription of a cancellation of wage credits or total reduction of benefit rights under the Federal Unemployment Tax Act (FUTA), 26 U.S. Code § 3304(a)(10), and the rule aligns the requirements to requalify for benefits with the disqualification for misconduct under 39-51-2303(1), MCA.

4. 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 I. Karasch, Department of Labor and Industry, P.O. Box 8020, Helena, Montana, 59604-8020; fax (406) 444-2699; or e-mail bkarasch2@mt.gov, and must be received no later than 5:00 p.m., September 27, 2021.

5. 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.

6. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on August 12, 2021, by e-mail.

7. 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.

8. The department staff has been designated to preside over and conduct this hearing.

/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 August 17, 2021.