



Montana Department of  
**LABOR & INDUSTRY**

**Laura Fix, Chairperson**  
**Jenny Iverson, Member**  
**Derek Oestreicher, Member**

**Board Meeting Agenda, Thursday February 29, 2024**

**Important Note: Due to the safety measures adopted by the Department of Labor & Industry in response to the COVID-19 pandemic, these reviews will be held remotely/via teleconference only.**

**[Join Zoom Meeting by telephone](#)**

**<https://mt-gov.zoom.us/j/89619718017?pwd=YmZFVGloYmNFbmo4VFQrTGhZL2ZqQT09>**

Meeting ID: 896 1971 8017

Password: 809471

Dial by Telephone

+1 646 558 8656

Meeting ID: 896 1971 8017

Password: 809471

Find your local number: <https://mt-gov.zoom.us/u/kcOMDpm167>

Join by SIP

[89619718017@zoomcrc.com](mailto:89619718017@zoomcrc.com)

Join by H.323 (Polycom)

162.255.37.11##89619718017

**SCHEDULED REVIEWS**

**Between 9:00 A.M. to 11:00 A.M.**

**Public Hearing on Proposed Amendment and Repeal.**

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

In the matter of the amendment of )  
ARM 24.7.101, 24.7.303, 24.7.304, )  
24.7.305, 24.7.306, and 24.7.308 and )  
the repeal of ARM 24.7.312 pertaining )  
to the Unemployment Insurance )  
Appeals Board )

NOTICE OF PUBLIC HEARING ON  
PROPOSED AMENDMENT AND  
REPEAL

TO: All Concerned Persons

1. On February 29, 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/89619718017>  
Meeting ID: 896 1971 8017, Passcode: 809471  
-OR-
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656  
Meeting ID: 896 1971 8017, Passcode: 809471

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 February 22, 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](mailto:laborlegal@mt.gov).

3. GENERAL STATEMENT OF REASONABLE NECESSITY: These rules were generally amended to change language from passive to active voice, to use similar terminology throughout the rules, to provide clarity and simplification of language, and to identify persons responsible for specific actions allowed by these rules. Specific statements will follow when needed.

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

24.7.101 ORGANIZATION AND PUBLIC PARTICIPATION OF UNEMPLOYMENT INSURANCE APPEALS BOARD (1) The Unemployment Insurance Appeals Board of the Department of Labor and Industry ~~herein~~ adopts and incorporates the organizational structure of the Unemployment Insurance Appeals Board as it has been set out and explained in chapter 1 of this title. (2) remains the same.

AUTH: 2-3-103, 2-4-201, MCA  
IMP: 2-3-103, 2-4-201, MCA

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 clearly indicates otherwise.

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

24.7.304 FILINGS WITH THE BOARD (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~~ If an interested party is required, or permitted, to file documents, the interested party must file the documents with the board using one of the following methods and addressing the documents to the board:

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

(b) hand deliver filings to 1315 Lockett Avenue, Helena, MT 59601;

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

(d) any other method permitted by the department.

~~(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 on the date the board receives it. It is the responsibility of the filing party~~ filing party's responsibility to ensure that the board receives all documents ~~are received~~ are received timely by the board.

(3) An interested party may submit written argument for the board's consideration. The interested party must file the written argument with the board no later than five business days from the date of the scheduled review proceeding.

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

REASON: Reasonable necessity exists to remove the option for the public to fax file documents and provide the option to upload documents to their eServices account via MUSE Montana Unemployment Services Environment (MUSE) because with the department's adoption of the MUSE system and end of the Electronic Content Manager/Perceptive (ECM) system, the department can no longer receive documents by fax but can do so through uploads to MUSE. Reasonable necessity exists to clarify that parties may submit written argument if they will not be present at the review proceeding and to include it with filings, rather than ARM 24.7.312, where it was formerly located, because argument is not considered new evidence.

24.7.305 BOARD REVIEW PROCEDURE (1) ~~The board review on an appeal of an appeals referee'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)(1) 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 sent to the all interested parties at least ten days prior to the board's review by regular mail. Interested parties are responsible for giving the board the party's current contact information.

~~(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. Lay representatives may not be paid for the representation unless they are employed by the claimant's labor union, are an employee of the employer or third party administrator for an employer or group of employers receiving regular wages for the representation, or in the interest of justice at the board's sole discretion.~~

(2) The board will conduct its review proceeding informally and may choose to hold a review in person or remotely at its discretion. The board will consider and decide all issues relevant to an appeal when consideration does not conflict with other rules in ARM Title 24, chapter 7.

(3) Either party to the appeal before the board may appear at any board proceeding on the party's own behalf or may be represented by an attorney or through an authorized lay representative. Lay representatives may not be paid for representation unless:

(a) the lay representative is employed by the claimant's labor union;

(b) the lay representative is an employee of the employer;

(c) the lay representative is a third-party administrator for an employer or group of employers receiving regular wages for the representation; or

(d) it is in the interest of justice at the board's sole discretion.

~~(4) At the scheduled date and time of the board proceeding, the board will make two attempts to reach each interested party at the telephone number(s) provided. If the board is unable to reach a party and/or the party fails to appear or make a request to continue, the board will make a determination pursuant to proceed with the review and make its determination under ARM 24.7.306.~~

~~(5) At any time prior to the issuance of the board's decision, the board may at its discretion continue a proceeding in order to secure evidence or argument that is necessary and to be fair to the parties, but in no case may the board's review be continued without board action for more than 60 days beyond the date originally set for the board proceeding. In the event that a scheduled board proceeding is continued, the board review shall be rescheduled with due notice to all interested parties.~~

(5) If an interested party notifies the board that the party will be unable to attend the scheduled review, and asks to continue the review, the board or board

chair may continue the hearing if continuance is either fair to the parties or it allows a party to provide necessary evidence or argument to the board.

(6) If the board chair reschedules a review, such review must occur no later than 60 days from the date of the originally scheduled review. Notice of this review must follow the requirements of (1).

(7) If the board finds that it needs more evidence to make its decision, it may remand the case to the appeals referee. The board must promptly notify the interested parties of such action.

(8) The rules of evidence and civil procedure are not binding in board administrative proceedings for unemployment insurance matters.

AUTH: 2-4-201, MCA

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

REASON: Reasonable necessity exists to remove how board review is initiated as statute already indicates a decision by an appeals referee (hearing officer) is final unless appealed to the board. Reasonable necessity also exists to clarify who has the authority to choose the review setting because there was previously confusion whether an interested party could request and/or require the board to meet in person. Due to the availability of technology, and to reduce department costs, board member travel time, and health and safety risk to board members and the public, the department grants the board the authority to determine the setting. Reasonable necessity also exists to move procedural requirements of remand out of ARM 24.7.306 which focuses on how the board makes decisions and not the procedures which occur when a decision is made. Reasonable necessity exists to move the relevant portions of ARM 24.7.312 to this rule, to consolidate board review procedures.

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. The board will consider, as it deems appropriate, such records or portions of those records as the board deems appropriate which the department transmitted on appeal as required under 39-51-2404, MCA. As soon as possible after the hearing, the board will decide whether to reverse, modify, or affirm the decision of the appeals referee. Written notice of the board's action will be sent to all interested parties. The board will also consider interested parties' timely filed written arguments and any oral arguments of the parties which appear before the board at the time of the review proceeding.~~

(2) The board will review the appeals referee's decision for errors of law or fact and will determine whether the appeals referee's decision was based upon substantial evidence. ~~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) The board will only consider new evidence to determine whether an interested party timely filed an appeal to the board. A party must submit new evidence by both filing it with the board and sending a copy to all interested parties

no later than five business days before the scheduled review proceeding. The evidence must be the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.

(4) As soon as possible after the hearing, the board will decide whether to remand, reverse, modify, or affirm the decision of the appeals referee. Written notice of the board's action will be mailed to all interested parties.

~~(3)(5)~~ If a party fails to appear at the board proceeding and ~~no~~ that party does not show good cause for continuance is shown, the board shall render must make its decision ~~on the basis of~~ based on the record, written argument submitted, and argument of parties in attendance.

~~(4)(6)~~ Inability of the board to achieve a favorable vote regarding an appeal will 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 remove the department's requirement to submit records because that is already a statutory requirement in 39-51-2404, MCA. Reasonable necessity also exists to clarify the board's standard of review of an appeals referee's decision, explain the board's limitations and procedures if a case is time-barred for untimely appeals, and grant the board authority to remand cases when necessary. This allows board members and the public to understand the board's authorities and limitations in review proceedings. Reasonable necessity exists to move the relevant portions of ARM 24.7.312 to this rule, to consolidate board determinations.

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

(1) Either a board member or an interested party may seek to disqualify a board member from reviewing an appeal proceeding.

(2) A board member must be disqualified from the review of an appeal proceeding if:

(a) that member's private interest would conflict with their public duty;

(b) it is an appeal of that member's unemployment insurance matter; or

(c) that member represents any interested party or witness at that board proceeding.

~~(2)(3) 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. 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 seeking to disqualify a board member from reviewing an appeal proceeding must, within five~~

business days, file a written motion made in good faith, along with a supporting affidavit. The motion must include the reason the filing party believes the member should be disqualified and any evidence to support the included reasons.

(a) The interested party seeking disqualification must send the motion and affidavit to all other interested parties' address(es) of record at least five business days before any related scheduled board proceeding.

(b) If the interested party seeking disqualification fails to follow the requirements of this rule, the board will dismiss the motion.

(c) If the interested party not seeking disqualification does not file a response to the motion and send it to both the board and the other party at least two calendar days before the scheduled proceeding, the party not seeking disqualification waives the opportunity to provide a response.

(d) When the board receives the filed motion, supporting affidavit, and any written response, it will consider the motion to challenge a board member at the scheduled board proceeding and either enter an order of recusal or decline the member's disqualification.

(e) Filings under this rule must comply with ARM 24.7.304.

AUTH: 2-4-201, MCA

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

REASON: Reasonable necessity exists to provide clear reasons a board member must or may be disqualified and to provide the public with procedures to follow when seeking board member disqualification.

5. The rule proposed to be repealed is as follows:

24.7.312 NEW MATERIAL BEFORE THE BOARD

AUTH: 2-4-201, MCA

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

REASON: Reasonable necessity exists to remove the board's authority to consider evidence which was not before the appeals referee because the board is tasked with reviewing the appeals referee's decision, not reweighing evidence or considering new evidence which the appeals referee did not have. This aligns the board's review authority with other appellate judiciary and/or quasi-judiciary bodies. Reasonable necessity also exists to move the procedure for board remand to the rule outlining the majority of board procedures for organizational flow.

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](http://dli.mt.gov/rules) or P.O. Box 1728; Helena, Montana 59624. Comments must be received no later than 5:00 p.m., March 8, 2024.

7. An electronic copy of this notice of public hearing is available at [dli.mt.gov/rules](http://dli.mt.gov/rules) and [sosmt.gov/ARM/register](http://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](http://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.

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

UNEMPLOYMENT INSURANCE APPEALS  
BOARD, LAURA FIX, CHAIR

/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 January 30, 2024.