

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

In the matter of the adoption of New	)	NOTICE OF ADOPTION AND
Rules I through III and the repeal of	)	REPEAL
ARM 24.28.101, 24.28.102,	)	
24.28.103, 24.28.104, 24.28.105,	)	
24.28.106, 24.28.107, 24.28.108,	)	
24.28.110, 24.28.111, and 24.28.112	)	
pertaining to workers' compensation	)	
mediation	)	

TO: All Concerned Persons

1. On June 24, 2022, the Department of Labor and Industry (department) published MAR Notice No. 24-28-396 pertaining to the public hearing on the proposed adoption and repeal of the above-stated rules at page 957 of the 2022 Montana Administrative Register, Issue Number 12.

2. The department held a public hearing in Helena on July 19, 2022, 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 responses are as follows:

COMMENT #1: A commenter suggested that New Rule I does not sufficiently require those requesting mediation to state the basis for their mediation request because it does not require the filling out of a department-generated form.

RESPONSE #1: The department acknowledges the comment. However, the concern is statutorily addressed and need not be reiterated in rule. Section 39-71-2401, MCA requires parties to make specific written demands, and respond to such demand, prior to a mediation request. Failure to comply with this process subjects the mediation to dismissal by motion of a party or on the mediator's motion. The department will continue to make its mediation request form available to parties, many of whom, it is expected, will continue to make use of it.

COMMENT #2: A commenter suggested that New Rule III which permits mediation via a "remote conferencing platform" contradicts 39-71-2411(4), MCA, which provides for mediation in person or "by telephone conference call." The commenter states she has had issues utilizing zoom conferencing for mediation. The commenter further argues that parties may not have the technological capabilities to join a Zoom meeting.

RESPONSE #2: The comment is noted. However, the commenter overly narrowly reads the statute. While true that 39-71-2411, MCA provides for mediation by

conference call, nothing requires the mediation not to use an electronic platform to host the call nor does it require the department to call out, rather than a party call in, to be effective.

To the extent the commenter is specifically concerned with utilization of the Zoom platform, the platform permits parties to call a specified phone number to participate in a conference call. This requires no technological access or capabilities by a party beyond the use of a telephone. To the extent the commenter is concerned that a video conference may be utilized for mediation, such would only be utilized by the request of and with the consent of all parties to the mediation.

4. The department has adopted New Rule I (24.28.121), New Rule II (24.28.125), and New Rule III (24.28.129) as proposed.

5. The department has repealed ARM 24.28.101, 24.28.102, 24.28.103, 24.28.104, 24.28.105, 24.28.106, 24.28.107, 24.28.108, 24.28.110, 24.28.111, and 24.28.112 as proposed.

/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 July 26, 2022.