

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 24.2.101, the adoption of NEW) PROPOSED AMENDMENT,
RULES I through III, and the repeal of) ADOPTION, AND REPEAL
ARM 24.2.105, 24.11.905, 24.11.906,)
and 24.29.201 pertaining to public)
participation and model rules)

TO: All Concerned Persons

1. On May 25, 2022, 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, adoption, 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/82449420584>, Meeting ID: 824 4942 0584, Passcode: 3610701928; or
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656, Meeting ID: 824 4942 0584, Passcode: 3610701928.

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 May 18, 2022, to advise us of the nature of the accommodation that you need. Please contact Brandon Kirchgasler, P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-3359; or Montana Relay Service at 711; or e-mail bkirchgasler@mt.gov.

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

24.2.101 INCORPORATION OF MODEL RULES (1) The Department of Labor and Industry has adopted the model rules proposed by the attorney general by reference to such rules as stated in ARM 1.3.205 1.3.211 through ARM 1.3.233 with the following exceptions:

(a) through (3) remain the same.

AUTH: 2-4-110, 2-4-201, MCA
IMP: 2-4-201, MCA

REASON: Reasonable necessity exists to amend this rule to correct the adoption by reference for rules which are no longer in effect.

4. GENERAL STATEMENT OF REASONABLE NECESSITY: The department has not previously promulgated public participation rules pursuant to 2-

3-103, MCA. As part of ongoing efforts to ensure compliance and conformity with all applicable laws, the department proposes to adopt three new rules to guide public participation for the department and its administratively attached agencies. The department intends to propose to each of its attached agencies the adoption of these model rules to ensure consistency and uniformity of public participation department wide.

5. The proposed new rules are as follows:

NEW RULE I POLICIES AND OBJECTIVES IN PROVIDING PUBLIC PARTICIPATION IN THE OPERATION OF THE DEPARTMENT OF LABOR AND INDUSTRY (1) Participation of the public is to be provided for, encouraged, and assisted with to the fullest extent practicable, consistent with other requirements of state law, and the rights and requirements of personal privacy. The department invites and encourages public participation to better identify and meet customer needs. The major objectives of public participation include:

- (a) greater responsiveness of governmental actions to public concerns and priorities; and
- (b) improved public understanding of official programs and actions.
- (2) The public is also advised that in accordance with 2-3-103, MCA, an opportunity for public comment on any public matter not on the agenda of the department's public meetings and that is within the department's jurisdiction is given. No action will be taken on these matters until proper notice has been given under the provisions of Montana law.
- (3) Department employees shall make decisions based on what is best for the customer, both internal and external, within the parameters of applicable laws and administrative rules.

AUTH: 2-3-103, MCA

IMP: 2-3-103, MCA

NEW RULE II GUIDELINES FOR DETERMINATION OF SIGNIFICANT INTEREST TO THE PUBLIC (1) The adoption, amendment, or repeal of any rule, regulation, standard, or statement of general applicability that implements, interprets, or prescribes law, or policy, procedure, or practice requirements of the department are considered matters of significant interest to the public and require notice and opportunity for public participation in the decision-making process.

- (2) In all other cases, whether or not the decision is one of significant interest to the public will be determined by the person within the department who is proposing the decision, according to the following considerations:
 - (a) whether the decision regards a controversial matter;
 - (b) the number of persons who will be affected by the decision;
 - (c) the fiscal impact the decision will have; or
 - (d) whether a high level of public interest has been witnessed by the department.

AUTH: 2-3-103, MCA

IMP: 2-3-103, 2-4-101, 2-4-102, MCA

NEW RULE III NOTICE AND MEANS FOR PUBLIC PARTICIPATION (1) If the department determines that significant interest to the public is involved, one or more of the following steps, as applicable, shall be taken to assist public participation in decision-making:

- (a) a proceeding or hearing shall be held in compliance with the provisions of the Montana Administrative Procedure Act, Title 2, chapter, 4, MCA;
- (b) a public hearing, after appropriate notice is given, shall be held pursuant to any other provision, state law, local ordinance, or regulation;
- (c) a news release, legal advertisement, or other method of publication shall be given to news media within the area to be affected, including:
 - (i) department name;
 - (ii) name of department representative most familiar with the proposed action; and
 - (iii) address, e-mail address, telephone and fax numbers where interested persons may submit their data, views, or arguments, orally or in writing, concerning the proposed action.

AUTH: 2-3-103, MCA

IMP: 2-3-103, 2-3-104, MCA

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

24.2.105 RULES OF DISCOVERY IN CONTESTED CASES

AUTH: 2-4-602, 39-3-202, MCA

IMP: 2-4-602, 39-3-202, MCA

REASON: The department determined it is reasonably necessary to repeal this unnecessary rule as it is identical to ARM 1.3.217, which the department has adopted by reference.

24.11.905 PROVIDING SPEAKERS

AUTH: 2-4-103, MCA

IMP: 2-4-103, MCA

REASON: The department determined it is reasonably necessary to repeal this unnecessary rule. While the department remains ready and willing to provide speakers as it is able to do for those wishing to learn more about unemployment insurance laws, no administrative rule is necessary for this purpose.

24.11.906 MEETINGS OF THE UNEMPLOYMENT INSURANCE APPEALS BOARD, REFEREE'S HEARING, ADVISORY COUNCIL MEETINGS, AND OTHER MEETINGS

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

REASON: The department is repealing this rule because it duplicates the department-wide rulemaking proposed in this rulemaking. To the extent it purports to adopt rules on behalf of the Unemployment Insurance Appeals Board, the rule is also invalid, because that board is an independent agency with its own rulemaking authority.

24.29.201 INTRODUCTION

AUTH: 2-4-201, 39-71-203, 39-72-203, MCA
IMP: Title 2, chapters 3 and 4, MCA

REASON: It is reasonably necessary to repeal this rule because of its archaic form. To the extent it is substantive, it duplicates the department-wide rule adoption of model rules in ARM 24.2.101.

7. 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 Brandon Kirchgasler, P.O. Box 1728, Helena, Montana 59624-1728 or e-mail bkirchgasler@mt.gov, and must be received no later than 5:00 p.m., May 27, 2022.

8. 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.

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

10. 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.

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

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Rule Reviewer

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 19, 2022.