

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

In the matter of the adoption of) NOTICE OF ADOPTION OF
Temporary Emergency Rules I) TEMPORARY EMERGENCY RULES
through IV pertaining to)
unemployment insurance benefits)
related to the COVID-19 pandemic)

TO: All Concerned Persons

1. The Department of Labor and Industry is adopting the following emergency rules for the following reasons:

A. On March 12, 2020, Governor Steve Bullock declared an emergency in the State of Montana with regards the COVID-19 pandemic in Executive Order 2-2020.

B. On March 13, 2020, President Donald J. Trump declared a national emergency due to the COVID-19 pandemic.

C. On March 14, 2020, Governor Steve Bullock extended the emergency in the State of Montana with regards the COVID-19 pandemic in Executive Order 3-2020.

D. The Commissioner of Labor and Industry finds that under the emergency circumstances of the COVID-19 pandemic, there is an immediate peril to the public health, safety, and welfare, due to employer's needs to make sure that employees showing symptoms consistent with COVID-19 contagion are not present at the workplace, and help ensure that the recommendations of medical professionals and public health authorities that persons showing symptoms consistent with COVID-19 contagion self-quarantine for specified periods be followed, without employees losing all income as a result of those actions. The commissioner further finds that there is imminent peril to the public welfare, as expressed in the public policy of the State of Montana by 39-51-102, MCA, that widespread temporary layoffs by employers will cause serious economic harm to employees who are not paid during periods of layoffs caused by the COVID-19 pandemic.

E. There is reasonable necessity to immediately adopt temporary emergency rules for unemployment insurance purposes in order to protect the public health, safety, and welfare, because of the emergency conditions of the COVID-19 pandemic. There is reasonable necessity to immediately adopt temporary emergency rules pursuant to 10-3-104, MCA, affecting the operation of the state unemployment insurance program. There is reasonable necessity to immediately adopt temporary emergency rules to ensure that the state unemployment insurance program prevents the harm of widespread unemployment due to the COVID-19 pandemic for the reasons stated by the public policy expressed in 39-51-102, MCA.

2. The temporary emergency rules are effective March 17, 2020, when this rule notice is filed with the Secretary of State.

3 The text of the temporary emergency rules provides as follows:

NEW RULE I EMERGENCY DEFINITIONS RELATED TO COVID-19 CLAIMS FOR UNEMPLOYMENT INSURANCE BENEFITS The following definitions only apply upon when there has been a declaration by the governor of an emergency or disaster related to the COVID-19 pandemic.

(1) "COVID-19" means the pandemic respiratory disease caused by coronavirus SAR -CoV-2, or mutations of that coronavirus.

(2) "COVID-19 quarantine" means that the claimant has received advice from a medical doctor or a public health authority recommending or requiring that the individual be isolated from others:

(a) for a period of up to 14 days in order to determine whether or not the individual has been exposed to the pathogens that cause COVID-19; or

(b) while the individual is infectious with COVID-19.

(3) "Family member" means a person residing in the same household as the claimant, and includes a partner or family member as defined in 45-5-206, MCA.

AUTH: 10-3-104, 39-51-302, MCA

IMP: 10-3-104, 39-51-102, MCA

NEW RULE II EMERGENCY RULE RELATED TO COVID-19 CLAIMS FOR UNEMPLOYMENT INSURANCE BENEFITS (1) This rule is only effective when there has been a declaration by the governor of an emergency or disaster related to the COVID-19 pandemic.

(2) A claimant directed by the employer to leave work or not report for work due to the employer's response to the COVID-19 pandemic, including COVID-19 induced reduction in demand or availability of materials, is deemed to have been temporarily laid off by the employer.

(3) A claimant subject to a COVID-19 quarantine is deemed to be laid off by the employer during the period of the quarantine.

(4) A claimant who is a caregiver of a family member who is the subject of a COVID-19 quarantine is deemed, in order to further the public health, safety, and welfare, to also be subject to a COVID-19 quarantine.

(5) When a claimant has experienced a temporary layoff due to the COVID-19 pandemic, pursuant to (2), (3), or (4), the claimant is deemed to be able, available, and seeking suitable work when:

(a) the employer intends to recall the claimant to work at the end of the temporary layoff; and

(b) the claimant intends to return to work when recalled by the employer and takes reasonable measures to maintain contact with the employer.

(6) A claimant laid off as the result of being subject to a COVID-19 quarantine is ineligible for benefits if the claimant refuses work that can be performed while complying with the terms of the quarantine.

(7) A claimant who is otherwise eligible for benefits pursuant to this rule is deemed to have fulfilled the waiting period as of the date the temporary layoff is effective.

(8) An employer is relieved of charges arising from a COVID-19 layoff and paid pursuant to emergency NEW RULES I through IV.

AUTH: 10-3-104, 39-51-302, MCA

IMP: 10-3-104, 39-51-102, MCA

NEW RULE III EMERGENCY RULE RELATED TO UNEMPLOYMENT INSURANCE DEADLINES ARISING DURING A DECLARED EMERGENCY OR DISASTER RELATED TO COVID-19 PANDEMIC

(1) This rule is only effective upon when there has been a declaration by the governor of an emergency or disaster related to the COVID-19 pandemic.

(2) The department may find that good cause exists for late filings due to the circumstances of the COVID-19 pandemic.

(3) The department may extend the time for an employer to file wage reports and pay unemployment insurance contributions as is reasonable and appropriate to the circumstances of the COVID-19 pandemic.

AUTH: 10-3-104, 39-51-302, MCA

IMP: 10-3-104, 39-51-102, MCA

NEW RULE IV REGULAR UNEMPLOYMENT INSURANCE RULES TO BE CONSTRUED TO GIVE EFFECT TO EMERGENCY RULES RELATED TO COVID-19 PANDEMIC

(1) This rule is only effective when there has been a declaration by the governor of an emergency or disaster related to the COVID-19 pandemic.

(2) The department shall apply its usual unemployment insurance rules in a manner that is consistent with emergency NEW RULES I through IV and in way that carries out the intent of emergency NEW RULES I through IV to provide unemployment benefits to employees who are laid off due to the COVID-19 pandemic through no fault or control of their own.

AUTH: 10-3-104, 39-51-302, MCA

IMP: 10-3-104, 39-51-102, MCA

4. The rationale for the temporary emergency rules is as set forth in paragraph 1.

5. A standard rulemaking procedure will be undertaken prior to the expiration of these temporary emergency rules.

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 Department of Labor and Industry, attention: Mark Cadwallader, 1315 E. Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, or e-mailed to mcadwallader@mt.gov, 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.

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

/s/ BRENDA NORDLUND
Brenda Nordlund, Acting Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State March 17, 2020.