

LABOR SERVICES DIVISION[875]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 91E.5, the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 160, “Employer Requirements Relating to Non-English Speaking Employees,” Iowa Administrative Code.

The proposed amendments align the rules with statutory authority, revise outdated rules and make other technical changes.

The principal reasons for adoption of these amendments are to update the rules, implement legislative intent, and protect the safety and health of Iowa workers.

If requested in accordance with Iowa Code section 17A.4(1)“b” by the close of business on February 23, 2016, a public hearing will be held on February 24, 2016, at 1:30 p.m. in the Capitol View Room at 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendment. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)281-5915 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted by interested persons no later than February 24, 2016, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@iwd.iowa.gov.

No variance procedures are included in this rule making. Variance procedures are set forth in 875—Chapter 5.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 91E.

The following amendments are proposed.

ITEM 1. Amend rule 875—160.1(91E) as follows:

875—160.1(91E) Purpose and scope. The rules in this chapter are intended to implement and clarify the division of labor’s responsibilities under Iowa Code chapter 91E. These rules apply to employees employed on an hourly basis. ~~These rules would apply to employees paid a salary, piece, task or other basis of calculation unless specifically exempted by rule 875—215.4(91D).~~ These rules apply to employers whose total employment of employees paid on an hourly basis in this state exceeds 100.

ITEM 2. Amend rule 875—160.3(91E), introductory paragraph, as follows:

875—160.3(91E) ~~Comprehension of employment~~ Knowledge of English. The Act and these rules apply to employees who do not speak, read, write, or understand English ~~to a degree necessary for comprehension of~~ well enough to understand the terms, conditions, and daily responsibilities of employment. ~~The following include, as a minimum, the terms, conditions and daily responsibilities of employment which an~~ An employee must be able to comprehend who can understand the following in English is not covered by these rules:

ITEM 3. Amend subrules 160.3(1) to 160.3(5) as follows:

160.3(1) ~~The minimum number of hours an employee can expect to~~ of work on a weekly basis.

160.3(2) ~~The hourly wages of the position of employment, including the starting hourly wage.~~

160.3(3) All mandatory and elective benefits.

160.3(4) ~~A description of the responsibilities and tasks of the position of employment~~ The job duties.

160.3(5) The safety and health risks, ~~known to the employer, to the employee involved in the position of employment~~ of the job and appropriate methods of protection.

ITEM 4. Amend subrules 160.4(1) and 160.4(3) as follows:

160.4(1) *Interpreter available.* An interpreter shall be made available at ~~the a work site when an employer has more than~~ where at least 10 percent of its ~~the~~ employees ~~that are non-English speaking and~~ speak the same non-English language. At least one interpreter shall be available at each work site for each entire shift on which the non-English speaking employees are employed.

160.4(3) *Spanish-speaking interpreters.* If a Spanish-speaking interpreter is needed, the employer shall select an interpreter from the list of interpreters developed by the commissioner. ~~Persons on the commissioner's list will be selected from a statewide list of interpreters provided by the Spanish-speaking people commission.~~

ITEM 5. Amend paragraph **160.7(1)“c”** as follows:

c. ~~Who resign~~ Resign from employment within four calendar weeks of the date of initial employment. ~~Periods of temporary layoff shall not be included in the 28-day computation, and~~

ITEM 6. Amend rule 875—160.8(91E) as follows:

875—160.8(91E) Inspections and investigations. This rule pertains to ~~either the enforcement of the Act or to the granting of exemptions.~~

160.8(1) Inspections ~~and investigations~~ shall take place at the times and places as directed by the commissioner may direct.

160.8(2) Inspections ~~and investigations~~ may be conducted without prior notice ~~by correspondence, telephone conversation, review of materials submitted to the commissioner, or by a physical inspection of the work site.~~

160.8(3) The commissioner may interview persons at the work site and utilize other reasonable inspection ~~or investigatory~~ techniques including but not limited to correspondence, telephone conversation, review of written materials, and physical inspection of the work site.

160.8(4) ~~Inspection or investigation shall be conducted to preclude unreasonable~~ Unnecessary disruptions to the operations at the work site will be avoided.

160.8(5) In the event the commissioner is not permitted to fully conduct an inspection ~~or investigation~~, an administrative warrant may be sought.

ITEM 7. Amend rule 875—160.9(91E), introductory paragraph, as follows:

875—160.9(91E) Exemptions. This rule contains procedures for the application for and granting of exemptions from the requirements of the Act or the rules in this chapter. These rules shall be construed to secure a prompt and just conclusion ~~of to a proceeding subject to this rule~~ these rules.

ITEM 8. Rescind subrule 160.9(5) and adopt the following **new** subrule in lieu thereof:

160.9(5) Hearing procedures are set forth in 875—Chapter 1.

ITEM 9. Amend subrule 160.10(1) as follows:

160.10(1) If the commissioner finds ~~any violations~~ a violation subject to a civil penalty, the commissioner shall issue a notice of violation to the employer and propose a civil penalty which shall be sent to the employer by certified mail. The employer shall have 14 calendar days from receipt of the notice of violation or proposed civil penalty to inform the commissioner by mail of the intent to contest the notification or proposed penalty. After receipt of the employer's notification, the commissioner shall afford the employer the opportunity for a hearing. The hearing shall be conducted pursuant to the rules in ~~875—Chapter 300~~ 875—Chapter 1.