

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Notice of Intended Action

Proposing rule making related to benefits and voluntary shared work and providing an opportunity for public comment

The Workforce Development Department hereby proposes to amend Chapter 23, “Employer’s Contribution and Charges,” Chapter 24, “Claims and Benefits,” and Chapter 25, “Benefit Payment Control,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 96.11.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 96.

Purpose and Summary

These proposed amendments are largely in response to law changes from the 2018 Legislative Session. The Department needs to ensure that its rules are properly updated. Updates to deductibility of vacation pay and pensions, as well as the way in which the Department handles fraudulent overpayments and offsets, are addressed by these amendments. Provisions for the implementation and administration of voluntary shared work will assist the Department in adding efficiency and clarity to this program for the benefit of employers and workers. The Department needs to have administrative rules that address these changes.

Fiscal Impact

The changes related to pension and vacation pay deductibility will permit the Department to reallocate an estimated 2.9 workforce advisor full-time equivalent (FTE) positions and \$150,000 in salary expenses paid from the unemployment insurance federal base grant in the Benefits Bureau.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on September 18, 2018. Comments should be directed to:

David Steen
Iowa Department of Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Email: david.steen@iwd.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend paragraph **23.43(4)“b”** as follows:

b. An individual who voluntarily quits supplemental part-time employment without good cause ~~part-time employment~~ and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting without good cause the supplemental part-time employer. The individual and the part-time employer which was voluntarily quit without good cause shall be notified on Form 65-5323 or 60-0186, Decision of the Workforce Development Representative, that benefit payments shall not be made which are based on the wages paid by the part-time employer, and benefit charges shall not be assessed against the part-time employer’s account; however, once the individual meets the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be restored for benefit payment and charging purposes as determined by applicable requalification requirements.

ITEM 2. Amend paragraph **24.2(1)“k”** as follows:

k. Any individual who is disqualified for benefits because of the individual’s failure to report ~~as directed to file a claim following the date specified~~ may appeal to the department for the right to establish good cause for failure to report because of extraordinary circumstances. A representative of the department may deny the request, and the decision may be appealed to an administrative law judge for a hearing and decision on the merits. If the petition is allowed, the petitioner shall be allowed to file a claim for and receive full benefits for each week for which such claim is filed, if otherwise eligible.

ITEM 3. Amend subrule 24.13(1) as follows:

24.13(1) Procedures for deducting payments from benefits. Any payment defined under subrules 24.13(2) and 24.13(3) made to an individual claiming benefits shall be deducted from benefits in accordance with the following procedures until the amount is exhausted; however, vacation pay which is deductible in the manner prescribed in rule 871—24.16(96) shall be deducted first when paid in conjunction with other deductible payments described in this rule unless otherwise designated by the employer: The individual claiming benefits is required to designate the last day paid which may indicate payments made under this rule. The employer is required to designate on the Form 65-5317, Notice of Claim Response, the amount of the payment and the period to which the amount applies.

If the individual or the employer does not designate the period to which the amount of the payment applies, ~~and the unemployment insurance representative cannot otherwise determine the period,~~ the unemployment insurance representative shall determine the ~~week or weeks~~ days following the effective date of the claim to which the amount of the payment applies by dividing the amount of the payment by the individual's average weekly wage during the highest earnings quarter of the individual's base period. The amount of any payment under subrule 24.13(2) shall be deducted from the individual's weekly benefit amount on the basis of the formula used to compute an individual's weekly benefit payment as provided in rule 871—24.18(96) not to exceed five workdays following the separation date of employment. If the employer reports vacation pay in more than one format and the effect on the benefit payment varies depending on how the vacation pay is applied, the unemployment insurance representative shall apply the vacation pay to the individual's weekly benefit payment by dividing the amount of the payment by the individual's average weekly wage during the highest earnings quarter of the individual's base period. The first day the vacation pay can be applied is the workday after the separation. The amount of any payment under subrule 24.13(3) shall be fully deducted from the individual's weekly benefit amount on a dollar-for-dollar basis.

ITEM 4. Amend paragraph **24.13(3)“e”** as follows:

e. Pension, retirement, annuity, or any other similar periodic payment made under a plan maintained and contributed to by a base period or chargeable employer. An individual's weekly benefit amount shall only be reduced ~~by that portion of the payment~~ if the base period employer has made 100 percent of the contributions to the plan which is the same percentage as the percentage contribution of the base period or chargeable employer to the plan.

ITEM 5. Rescind and reserve subrule **24.16(2)**.

ITEM 6. Amend paragraph **24.17(1)“d”** as follows:

d. The claimant shall be instructed to only report vacation pay applicable to the first ~~week~~ five workdays following the last date worked. The claimant shall also be instructed that vacation pay designated by the employer in excess of one week may result in an overpayment of benefits.

ITEM 7. Amend subrule 24.58(1) as follows:

24.58(1) ~~A shared work plan will last no longer than 52 weeks from the date on which the plan is first effective. The minimum length of a plan is four weeks shall be no shorter than 4 weeks and no longer than 52 weeks in duration. Any requests for subsequent plans will be reviewed by the department.~~

ITEM 8. Adopt the following new subrule 24.58(7):

24.58(7) Employer requirements.

a. For each week that a voluntary shared work employer has an active plan, the work share employer shall submit a certification of hours worked by employees covered by an approved work share plan in the form or manner directed by the department for each employee covered by the employer's approved work share plan.

b. The first employer weekly certification shall be due no later than the Monday following the effective date of the employer's work share plan. All subsequent weekly employer certifications shall be due no later than Monday (close of business) following the benefit week. If the employer fails to submit the weekly certification by the Monday immediately following the benefit week, the department will have good cause to terminate the employer's work share plan.

ITEM 9. Amend paragraph **25.8(2)“b,”** introductory paragraph, as follows:

b. The claimant may make refund of an overpayment by cash or by other means of an offset against future benefit payments, at the discretion of the department.

ITEM 10. Amend paragraph **25.8(2)“c”** as follows:

c. ~~Any benefits which may become due an individual against whom a fraudulent overpayment is outstanding may be used to reduce the amount of the fraudulent overpayment.~~ The employer's account will be noncharged for overpayments caused by fraud or misrepresentation.