

**WORKFORCE DEVELOPMENT DEPARTMENT[871]**

**Notice of Intended Action**

**Proposing rule making related to unemployment benefits insurance  
and providing an opportunity for public comment**

The Director of the Workforce Development Department hereby proposes to amend 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*

This proposed rule making further clarifies the effect vacation pay paid to an employee upon separation of employment has on unemployment insurance benefit payments. This rule making includes changes to the unemployment insurance fact-finding interview process to allow for more flexibility for claimants and employers to choose whether they want to participate verbally in a scheduled fact-finding interview. Additionally, this rule making would ensure that claimants who were overpaid unemployment insurance and have repaid the nonfraud overpayment have the ability to later collect the amount that was repaid if they are eligible for payments in the future.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*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 March 31, 2020. Comments should be directed to:

Nicholas Olivencia  
Iowa Department of Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Email: [nicholas.olivencia@jwd.iowa.gov](mailto:nicholas.olivencia@jwd.iowa.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 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, the unemployment insurance representative shall determine the 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. If the claimant received vacation pay under rule 871—24.16(96), the maximum number of days the vacation pay shall be applied is five workdays following the separation date.~~ The first day the vacation pay can be applied is the first 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 2. Amend paragraph **24.17(1)“d”** as follows:

*d.* The claimant shall be instructed to only report vacation pay applicable to the ~~first~~ 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~~ the vacation pay the claimant reported may result in an overpayment of benefits.

ITEM 3. Amend subrule 24.19(2) as follows:

**24.19(2)** Each interested party will be afforded the opportunity to ~~have a fact-finding interview by telephone provide information to the department regarding matters which are scheduled for a hearing awaiting decision to determine eligibility. A telephone fact-finding interview may be set up upon request of either interested party. The request must be received or postmarked within seven calendar days of the notice of claim being issued.~~ An interested party may request an in-person fact-finding interview as

a reasonable accommodation under the federal Americans with Disabilities Act of 1990, as amended, or the Iowa Civil Rights Act of 1965, as amended. The department shall reserve the right to call any interested party in for an in-person fact-finding interview.

ITEM 4. Amend subrule 25.8(1) as follows:

**25.8(1) *Good faith overpayment.*** If an individual has acted in good faith in claiming benefits for any week and it is later determined that the individual was not entitled to receive the benefits, the department shall recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment. ~~During a benefit year in which the maximum benefit amount has been paid or the maximum number of weeks has been paid and an overpayment is established for any benefits paid that the individual was not entitled to during that benefit year, no additional benefits will be payable to offset the overpayment.~~ The department shall ~~mail~~ issue the overpayment decision to the claimant's last-known address or through the claimant's preferred contact method. Once the overpayment amount has been established, an overpayment schedule shall be set up to leave a proper audit trail even if the claimant pays to the department a sum equal to the overpayment.

*a. to d.* No change.