

**WORKFORCE DEVELOPMENT DEPARTMENT[871]**

**Adopted and Filed**

**Rule making related to unemployment insurance**

The Director of the Workforce Development Department hereby amends Chapter 23, “Employer’s Contribution and Charges,” Chapter 24, “Claims and Benefits,” and Chapter 26, “Contested Case Proceedings,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted 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 as amended by 2022 Iowa Acts, House File 2355.

*Purpose and Summary*

These amendments align with the changes illustrated in 2022 Iowa Acts, House File 2355. In particular, the amendments prevent employers from being charged for an overpayment in certain situations, update guidelines for voluntary shared work, update the maximum number of benefit weeks, define “misconduct” in relation to unemployment benefits eligibility, update salary guidelines for unemployed job seekers, and provide for claimant appeals to bypass the Employment Appeal Board (EAB).

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 19, 2022, as **ARC 6606C**.

The Department received public comments from the EAB, Iowa Legal Aid (ILA), and the American Civil Liberties Union (ACLU). The Department also received public comment from Disability Rights Iowa (DRI). Though the latter communication was received after the public comment deadline, the Department nevertheless reviewed and considered it.

The EAB commented on matters involving appeals and misconduct.

The joint suggestions from ILA and ACLU focused on potential broad interpretations of the updated misconduct definition and the Department’s fact-finding process. The comments from DRI largely mirrored those of ILA and ACLU.

The Department incorporated suggestions received via public comment, specifically those from EAB regarding appeals and misconduct. Changes were made to Items 4 and 11.

*Adoption of Rule Making*

This rule making was adopted by the Director of the Department on January 24, 2023.

*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.

### *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).

### *Effective Date*

This rule making will become effective on March 29, 2023.

The following rule-making actions are adopted:

ITEM 1. Adopt the following **new** subrule 23.44(4):

**23.44(4)** If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund, and this credit shall include both contributory and reimbursable employers. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits unless the department determines that an employer's failure to respond timely or adequately was due to insufficient notification from the department, in which case the employer's account shall not be charged for the overpayment.

ITEM 2. Amend subparagraph **24.2(1)“c”(5)** as follows:

(5) Group “7” claimants are workers who are employed on a reduced workweek with an employer who is under voluntary shared work contract approved by the department. This group pertains ~~only~~ to those individuals who worked ~~full-time~~ full- or part-time and will again work ~~full-time~~ full- or part-time if the individuals' employment, although temporarily suspended, has not been terminated. Once the contract expires, claimants in this group are reviewed for placement in group “3,” “4,” “5,” or “6.”

ITEM 3. Amend subrule 24.29(1) as follows:

**24.29(1)** Whenever an employer at a factory, establishment, or other premises goes out of business at which the individual was last employed and is laid off, the individual's account is credited with one-half, instead of one-third, of the wages for insured work paid to the individual during the individual's base period, which may increase the maximum benefit amount up to ~~39~~ 26 times the weekly benefit amount or one-half of the total base period wages, whichever is less. This rule also applies retroactively for monetary redetermination purposes during the current benefit year of the individual who is temporarily laid off with the expectation of returning to work once the temporary or seasonal factors have been eliminated and is prevented from returning to work because of the going out of business of the employer within the same benefit year of the individual. This rule also applies to an individual who works in temporary employment between the layoff from the business closing employer and the ~~Claim for Benefits~~ claim for benefits. For the purposes of this rule, temporary employment means employment of a duration not to exceed four weeks.

ITEM 4. Rescind paragraph **24.32(1)“a”** and adopt the following **new** paragraph in lieu thereof:

a. For the purposes of this rule, “misconduct” is defined as a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is limited to conduct evincing such willful or wanton disregard

of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Misconduct by an individual includes but is not limited to all of the following:

- (1) Willful and deliberate falsification of the individual's employment application.
- (2) Knowing violation of a reasonable and uniformly enforced rule of an employer.
- (3) Intentional damage of an employer's property.
- (4) Consumption of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in a manner not directed by the manufacturer, or a combination of such substances, on the employer's premises in violation of the employer's employment policies.
- (5) Reporting to work under the influence of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in an off-label manner, or a combination of such substances, on the employer's premises in violation of the employer's employment policies, unless the individual is compelled to work by the employer outside of scheduled or on-call working hours.
- (6) Conduct that substantially and unjustifiably endangers the personal safety of coworkers or the general public.
- (7) Incarceration for an act for which one could reasonably expect to be incarcerated that results in missing work.
- (8) Incarceration as a result of a misdemeanor or felony conviction by a court of competent jurisdiction.
- (9) Excessive unexcused tardiness or absenteeism.
- (10) Falsification of any work-related report, task, or job that could expose the employer or coworkers to legal liability or sanction for violation of health or safety laws.
- (11) Failure to maintain any license, registration, or certification that is reasonably required by the employer or by law, or that is a functional requirement to perform the individual's regular job duties, unless the failure is not within the control of the individual.
- (12) Conduct that is libelous or slanderous toward an employer or an employee of the employer if such conduct is not protected under state or federal law.
- (13) Theft of an employer's or coworker's funds or property.
- (14) Intentional misrepresentation of time worked or work carried out that results in the individual receiving unearned wages or unearned benefits.

ITEM 5. Amend subparagraph **24.46(5)“c”(1)** as follows:

(1) If the individual's prospects for obtaining work within a reasonably short period are “good,” the individual is required to actively seek, apply for or accept, suitable work in which, all other considerations being reasonably equal, the gross average weekly wage equals or exceeds 65 60 percent of the individual's average weekly wage from the highest earnings quarter of the individual's base period.

ITEM 6. Amend rule 871—24.58(96), introductory paragraph, as follows:

**871—24.58(96) Voluntary shared work.** The voluntary shared work program provides that employers facing a temporary shortfall may reduce the work hours of employees in an affected unit and those employees will receive a portion of their regular unemployment insurance benefits. The program is designed to reduce unemployment and stabilize the workforce by allowing certain employees to collect unemployment insurance benefits if the employees share the work remaining after a reduction in the total number of hours of work and a corresponding reduction in wages. The reduction in work hours for employees is based on a work week comprised of 40 or fewer hours, and not a work week exceeding 40 hours. Additional information may be obtained by contacting the voluntary shared work coordinator. The employer may apply to participate in the program by completing a shared work plan application, which must be approved by the department. The employer shall submit the plan to the department 30 days prior to the proposed implementation date. The employer will administer the program in cooperation

with the department. Participating employees will complete the employee information form and claim for benefits and return them to the employer, who will submit them to the department. Administrative penalties in force during the duration of the plan will make an employee ineligible for the program. Child support obligations will be deducted and unemployment insurance overpayments will be offset as they are for regular unemployment insurance benefits.

ITEM 7. Rescind subrule 24.58(4) and adopt the following **new** subrule in lieu thereof:

**24.58(4)** Approval of a plan may be denied or revoked at the discretion of the department if the plan and its actual operation do not meet all the requirements stated in Iowa Code section 96.40. Reasons for denial or revocation of a plan include, but are not limited to:

- a. The provision of false or misleading information to the department;
- b. Unequal treatment of any employee in the affected unit;
- c. A reduction in fringe benefits resulting from participation in the program;
- d. An employer, while participating in the shared work unemployment compensation program, laying off any employee, whether the employee is employed within an affected unit or not; or
- e. Failure by the employer to monitor and administer the program.

ITEM 8. Amend paragraph **24.58(7)“a”** as follows:

a. For each week that a voluntary shared work employer has an active plan, the voluntary shared work employer shall submit a certification of hours worked by employees covered by an employer's 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. This includes a part-time employee provided that the employee meets all other requirements.

ITEM 9. Rescind rule 871—26.2(17A,96) and adopt the following **new** rule in lieu thereof:

**871—26.2(17A,96) Definitions.** Terms defined in the Iowa employment security law and the Iowa administrative procedure Act and which are used in these rules shall have the same meaning as provided by such laws. In addition, the following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

*“Contested case”* means a proceeding defined in Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case in Iowa Code section 17A.10A. It specifically includes any appeal from a determination of a representative of the department or any appeal or request for a hearing by an employer or employing unit from an experience rating, charge determination or other decision affecting its liability. Except as provided in subrule 26.17(5), a final decision of the employment appeal board of the department of inspections and appeals shall constitute final agency action. A presiding officer's decision shall be the final decision of the department if there is no appeal therefrom to the employment appeal board of the department of inspections and appeals or if the appeal is made directly to the district court in lieu of filing an appeal with the employment appeal board of the department of inspections and appeals.

*“Party”* means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

*“Presiding officer”* means an administrative law judge employed by the department of workforce development.

ITEM 10. Amend subrule 26.13(7) as follows:

**26.13(7)** If the subpoena is granted over objection, the aggrieved party may, in accordance with Iowa Code section 17A.13(1), petition the district court for review of the action before proceeding further. The aggrieved party must promptly notify the presiding officer that a petition for judicial review of the subpoena order will be filed immediately so the contested case may be postponed until the court has issued its ruling. Nothing herein shall preclude an aggrieved party from including the granting or denial of a subpoena as grounds for appeal of the presiding officer's decision in the contested case to the employment appeal board of the department of inspections and appeals or directly to the district court.

ITEM 11. Adopt the following **new** subrule 26.17(6):

**26.17(6)** In a claimant benefit contested case, final agency action shall be a presiding officer's decision, if no aggrieved party appealed the decision to the employment appeal board within 15 days, or the decision of the employment appeal board, if the aggrieved party appealed the decision to that tribunal.

*a.* Once final agency action has been established, any party who is aggrieved or adversely affected by the agency action has 30 days to file a petition for judicial review with the district court.

*b.* Any party in interest may file with the presiding officer a written application for rehearing within 20 days after the date that the decision becomes final as a result of the failure to appeal the decision to the employment board. Applications for rehearing filed before this date will be forwarded to the employment appeal board as appeals to that tribunal. A request for rehearing is deemed denied unless the presiding officer grants the rehearing request within 20 days after its filing.

*c.* Any party in interest may file a petition for judicial review within 30 days after the denial of the request for rehearing.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/22/23.