Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 35
"Wage Claims"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 91A.9
State or federal law(s) implemented by the rulemaking: Executive Order 10

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

September 24, 2024 9 to 9:30 a.m.	Lake Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Division of Labor Services no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

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Purpose and Summary

This proposed rulemaking in accordance with Executive Order 10 proposes a new Chapter 35 that provides procedures for investigating wage claims filed under Iowa Code chapter 91A.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

Employers subject to Iowa wage law will bear the costs.

- Classes of persons that will benefit from the proposed rulemaking:

Employees will benefit by having recourse for unlawful nonpayment of wages.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

This governs claims of no more than $6,500, and only against employers who are alleged to have underpaid employees.

- Qualitative description of impact:

The Department discerns no qualitative impact.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

There are no increased implementation or enforcement costs.

- Anticipated effect on state revenues:

None.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The benefit of underpaid employees having a remedy outweighs the cost of employers responding to wage claims.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

These procedures are not labor- or time-intensive for employers.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

No alternative methods were seriously considered.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

This implements a legislative policy that wage earners should have a remedy for underpayment.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Small businesses that properly pay employees will likely be unaffected by this chapter.

Text of Proposed Rulemaking

ITEM 1. Rescind 875—Chapter 35 and adopt the following **new** chapter in lieu thereof:

CHAPTER 35
WAGE CLAIMS

875—35.1(91A) Definitions.

"Claimant" means an employee who has submitted a wage claim form to the labor director.

"Director" means the director of the department of inspections, appeals, and licensing or the director's designee.

"Employee" includes a former employee and does not include an independent contractor.

"Enforceable" means eligible for the enforcement actions of the director.

"Legal action" means filing in a court of competent jurisdiction and subsequent activity pursuant to that filing.

"Wage claim form" means a document of the director that requests information pertinent to unpaid wages that an employee submits to the director to commence investigation.

875—35.2(91A) Right of private action. If a claimant wishes to pursue a private action after assigning a wage claim to the director, the claimant shall so notify the director in writing prior to commencing it.

875—35.3(91A) Filing a claim.

35.3(1) *Wage claim form.* An aggrieved employee shall supply such information as required by the director to commence the investigation of a claim. The claimant shall certify by signature that such information is true to the best of the claimant's knowledge and belief. A claim for wages may be sent to the director by mail, facsimile, or email.

35.3(2) *Assignment of claim.* By submitting a wage claim form to the director, a claimant assigns the claim to the director contingent on the director's determination that the claim is enforceable. A claimant may terminate the assignment by so notifying the director in writing. The director may terminate the assignment upon a determination that the claim is not enforceable.

35.3(3) *Denial of claim.* The director may deny claims within 14 days of receipt. Reasons for denying a claim without further investigation include but are not limited to the following:

a. The claim is received by the director more than one year after the date the wages became due and payable.

b. The claim must be heard in another forum or jurisdiction.

c. The claimant has begun a legal proceeding on the claim or has legal representation to pursue the claim.

d. The claim has been discharged in bankruptcy.

875—35.4(91A) Investigation.

35.4(1) *Receipt of wage claim form.* Upon receipt by the director of a completed and signed wage claim form, the director will review the claim. The director's review is not a contested case as defined in Iowa Code chapter 17A.

35.4(2) *Employer notification of wage claim.* The director will notify the employer in writing of the allegations of the claimant and request a response from the employer within 14 days from the date of the letter. This period may be extended by the director for good cause.

35.4(3) *Failure of employer to respond.* If the employer fails to answer the director's request for response within the 14-day period, or as extended by the director, the director may determine the claim to be enforceable.

35.4(4) *Additional information from claimant.* If the employer answers the director's request for response within the established time, the director may notify the claimant of the employer's response and afford the claimant an opportunity to present additional information.

35.4(5) *Additional information from employer.* Upon receipt of the requested additional information from the employee, the director may determine additional information is required from the employer.

35.4(6) *Determination of enforceability.* Upon receipt of sufficient information, the director may determine the claim for wages to be enforceable and notify the claimant and the employer of that determination.

35.4(7) *Determination of unenforceability.* The director may, at any time, determine a claim to be unenforceable. Should the director determine the claim is unenforceable, the director shall so notify the claimant. Reasons for the director to determine that a claim is unenforceable include but are not limited to the following:

a. Doubtful legal validity or complexity of the claim.

b. Doubtful ability to collect money from the employer.

c. The claim may require extensive discovery or involve protracted proceedings.

d. The potential value of the claim is such that the cost of the claimant's obtaining legal counsel for a private action would not be prohibitive.

e. The claimant is not responsive to the reasonable requests of the director, including but not limited to requests to provide information and to participate in a legal action.

f. The claimant fails to notify the director of an address change.

g. The inequity of the claim in the particular situation.

h. Another jurisdiction or forum is preferable for the claim.

i. A substantial probability that the claimant was not an employee.

j. The claim has been included in a bankruptcy estate.

35.4(8) *Settlement of claim.* The director may settle a claim at any time with the consent of the claimant. Such consent may be included on the wage claim form.

875—35.5(91A) Legal action on wage claims.

35.5(1) *Settlement opportunity.* The director will, in writing, afford the employer an opportunity to tender settlement 14 days prior to commencing a legal action.

35.5(2) *Counterclaims.* The director will not represent claimants on counterclaims or other legal actions brought by employers against claimants.

35.5(3) *Claimant participation.* The director may require the claimant to attend hearings and otherwise assist in the legal action as a condition of enforcing the claim.

These rules are intended to implement Iowa Code chapter 91A.