Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 160
"Employer Requirements for Non-English Speaking Employees"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 91E.5
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 25, 2024 9 to 9:30 a.m.	Woods 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:

Mitchell Mahan
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321-1270
Phone: 515.443.1051
Email: mitchell.mahan@dia.iowa.gov

Purpose and Summary

Proposed Chapter 160 requires employers to give language assistance to certain non-English speaking employees so that the employees may understand the terms of employment, safety issues, and health issues.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Employers with 100 or more employees will bear the costs.

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

Employees who have language impediments that prevent them from understanding terms of employment, safety issues, and health issues will benefit.

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:

Covered employers may have an employee use some of their time to comply with the chapter.

- Qualitative description of impact:

No qualitative impact is discerned.

3. Costs to the State:

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

This chapter is enforced by the Wage and Child Labor Unit of the Department of Inspections, Appeals, and Licensing. Enforcement costs are low as there are few inquiries under this chapter.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

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

Inaction would result in employees being vulnerable to financial exploitation and safety and health hazards.

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

No less costly or less intrusive methods are known.

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:

Not applicable.

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?

Employers with fewer than 100 employees are exempt from the requirements.

Text of Proposed Rulemaking

ITEM 1. Rescind 875—Chapter 160 and adopt the following **new** chapter in lieu thereof:

CHAPTER 160
EMPLOYER REQUIREMENTS FOR
NON-ENGLISH SPEAKING EMPLOYEES

875—160.1(91E) Definitions. The definitions in Iowa Code section 91E.1 are adopted with the following clarifications or additions:

"Act" means the non-English speaking employee services Act, Iowa Code chapter 91E.

"Applicant" means an employer, employee, or non-English speaking employee as those terms are defined in the Act.

"Business day" means those days an office is open and staffed with the person(s) capable of processing employees' requests for transportation provided in Iowa Code section 91E.3(2).

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

"Work site" means a single physical location where business is conducted or where services or industrial operations are performed (e.g., a factory, mill, store, hotel, restaurant, movie theatre, farm, ranch, bank, sales office, warehouse, or central administrative office).

875—160.2(91E) Knowledge of English. An employee who can understand the following in English is not covered by these rules:

160.2(1) The hours of work.

160.2(2) The hourly wage.

160.2(3) All mandatory and elective benefits.

160.2(4) The job duties.

160.2(5) The safety and health risks of the job and appropriate methods of protection.

160.2(6) Information and training on hazardous chemicals in the employee's work area.

160.2(7) Safety signs and symbols that warn of potential dangers and hazards at the work site.

160.2(8) The purpose of forms used by the employer including:

a. Orientation,

b. Insurance,

c. Accidents at the work site, and

d. Other forms the employee is required to complete or answer.

160.2(9) The employer's requirement to provide an interpreter if more than 10 percent of the employer's employees speak the same non-English language.

160.2(10) An ability to effectively communicate with a nurse or other medical personnel at the work site.

875—160.3(91E) Community services referral agent requirements.

160.3(1) *Referral agent available.* The employer provides to employees at each work site the name of the person who is designated as having the primary responsibility as the referral agent. The information shall be provided in the language of the non-English speaking employees.

160.3(2) *Referral agent's responsibilities.* The primary responsibility of the person employed as the employer's referral agent is to develop and maintain a list of contact persons and agencies, telephone numbers, and addresses of the community services provided in the work site's community. The referral agent assists non-English speaking employees in working with and through those services.

875—160.4(91E) Exemptions.

160.4(1) An applicant desiring an exemption may file a written application with the director that shall include:

a. The name, address and telephone number of the applicant;

b. The address or location of the work site affected;

c. A description of the operation or type of work site;

d. A listing of the section of the Act or rules to which the exemption would apply;

e. A representation of the impact of compliance on the part of the applicant;

f. A representation of why the exemption would be reasonable;

g. If the applicant is an employer, a description of how employees and non-English speaking employees have been informed of the application and their rights to petition the director for a hearing;

h. If the applicant is an employee or non-English speaking employee, a description of how the employer has been informed of the application and the employer's rights to petition the director for a hearing;

i. A request for a hearing if one is desired; and

j. Any other information the director may request.

160.4(2) At the time the application is received, the director shall promptly provide the applicant with a notice of receipt of application that shall be posted where notices are customarily posted for employees. If the applicant is an employee or non-English speaking employee, the employer shall post the notice when provided to the employer.

160.4(3) If the applicant is an employer, any affected employee or affected non-English speaking employee may request a hearing. If the applicant is an employee or a non-English speaking employee, the affected employer may request a hearing. Any request for a hearing on the application is made by notifying the director within 14 calendar days of posting of the notice.

875—160.5(91E) Enforcement and penalties. If the director finds a violation subject to a civil penalty, the director will issue a notice of violation to the employer and propose a civil penalty that shall be sent to the employer by certified mail. The employer has 14 calendar days from receipt of the notice of violation or proposed civil penalty to inform the director by mail of the intent to contest the notification or proposed penalty. After receipt of the employer's notification, the director will afford the employer the opportunity for a hearing.

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