Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 217
"Wages"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 91D.1
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 9:30 to 10 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:

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 217 details tip income, kickbacks, and reasonable cost for purposes of minimum wage determination. This rulemaking removes 22 rules from the prior chapter.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The rulemaking does not impose any meaningful costs. Employers subject to Iowa wage law will bear the costs.

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

Employees will benefit by knowing what wages they are due.

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:

The rulemaking does not impose any meaningful additional costs.

- Qualitative description of impact:

The rules provide clarity for proper payment of wages.

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:

The rulemaking has no anticipated fiscal impact.

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

The benefit of a remedy for retaliatory employer actions overrides any costs of employer compliance.

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

The Department has not identified any less costly methods or less intrusive methods.

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:

Alternative methods were rejected because this is a rarely used chapter that imposes no significant burden.

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?

The chapter is shorter and more understandable. The rules do not have a substantial impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 875—Chapter 217 and adopt the following **new** chapter in lieu thereof:

CHAPTER 217
WAGES

875—217.1(91D) Purpose and scope. This chapter addresses the definition of wages. Wages include the reasonable cost, as determined by the director, to an employer of furnishing any employee with board, lodging, or other facilities.

875—217.2(91D) Reasonable cost.

217.2(1) Reasonable cost is determined to be not more than the actual cost to the employer of the board, lodging, or other facilities furnished by the employer to the employees.

217.2(2) The cost of furnishing facilities found by the director to be primarily for the benefit or convenience of the employer will not be recognized as reasonable and may not be included in computing wages.

217.2(3) The following is a list of facilities found by the director to be primarily for the benefit or convenience of the employer. The list is intended to be illustrative rather than exclusive:

a. Tools of the trade and other materials and services incidental to carrying on the employer's business.

b. The cost of any construction by and for the employer.

c. The cost of uniforms and of their laundering, where the nature of the business requires the employee to wear a uniform.

SOURCE: 29 CFR 531.3.

875—217.3(91D) Free and clear payment; kickbacks. Whether in cash or in facilities, wages cannot be considered to have been paid by the employer and received by the employee unless they are paid finally and unconditionally or free and clear. The wage requirements will not be met where the employee kicks back directly or indirectly to the employer or to another person for the employer's benefit the whole or part of the wage delivered to the employee. This is true whether the kickback is made in cash or in other than cash.

SOURCE: 29 CFR 531.35.

875—217.4(91D) General characteristics of tips. A tip is a sum presented by a customer as a gift or gratuity in recognition of some service performed for the customer. The payment is to be distinguished from payment of a charge, if any, made for the service. In the absence of an agreement to the contrary between the recipient and a third party, a tip becomes the property of the person in recognition of whose service it is presented by the customer. Only tips actually received by an employee as money belonging to that employee, which the employee may freely use absent of any control by the employer, may be counted in determining whether the employee is a tipped employee and in applying the provisions that govern wage credits for tips.

SOURCE: 29 CFR 531.52.

875—217.5(91D) Payments that constitute tips. In addition to cash sums presented by customers that an employee keeps, tips received by an employee include amounts paid by bank check or other negotiable instrument payable at par and amounts transferred by the employer to the employee pursuant to directions from credit customers who designate amounts to be added to their bills as tips. Special gifts in forms other than money or its equivalent as above described such as theater tickets, passes, or merchandise, are not counted as tips received by the employee for purposes of this chapter.

SOURCE: 29 CFR 531.53.

875—217.6(91D) Tip pooling. Where employees practice tip splitting, as where food servers give a portion of their tips to the bussers, both the amounts retained by the food servers and those given the bussers are considered tips of the individuals who retain them. Similarly, where an accounting is made to an employer for information only or in furtherance of a pooling arrangement whereby the employer redistributes the tips to the employees upon some basis to which they have mutually agreed among themselves, the amounts received and retained by each employee as the individual's own are counted as the employee's tips.

SOURCE: 29 CFR 531.54.

875—217.7(91D) Dual jobs. When an employee is employed in two occupations, no tip credit can be taken for hours of employment in the occupation for which the employee does not meet the tip qualification.

SOURCE: 29 CFR 531.56.

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