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The Iowa Administrative Code Supplement is published biweekly pursuant to Iowa Code section 17A.6. The Supplement contains replacement chapters to be inserted in the loose-leaf Iowa Administrative Code (IAC) according to instructions included with each Supplement. The replacement chapters incorporate rule changes which have been adopted by the agencies and filed with the Administrative Rules Coordinator as provided in Iowa Code sections 7.17 and 17A.4 to 17A.6. To determine the specific changes in the rules, refer to the Iowa Administrative Bulletin bearing the same publication date.

In addition to the changes adopted by agencies, the replacement chapters may reflect objection to a rule or a portion of a rule filed by the Administrative Rules Review Committee (ARRC), the Governor, or the Attorney General pursuant to Iowa Code section 17A.4(6); an effective date delay imposed by the ARRC pursuant to section 17A.4(7) or 17A.8(9); rescission of a rule by the Governor pursuant to section 17A.4(8); or nullification of a rule by the General Assembly pursuant to Article III, section 40, of the Constitution of the State of Iowa.

The Supplement may also contain replacement pages for the IAC Index or the Uniform Rules on Agency Procedure.

INSTRUCTIONS
FOR UPDATING THE
IOWA ADMINISTRATIVE CODE

Agency names and numbers in bold below correspond to the divider tabs in the IAC binders. New and replacement chapters included in this Supplement are listed below. Carefully remove and insert chapters accordingly.

Editor's telephone (515)281-3355 or (515)242-6873

Public Health Department[641]

Replace Chapter 80

Workforce Development Department[871]

Replace Analysis

Replace Chapters 24 and 25

Labor Services Division[875]

Replace Chapter 3

CHAPTER 80
LOCAL PUBLIC HEALTH SERVICES
[Prior to 8/3/94, "Homemaker-Home Health Aide Services"]
[Prior to 4/11/07, see also 641—Ch 79]

641—80.1(135) Purpose. The purpose of the local public health services (LPHS) contract is to implement the core public health functions, deliver essential public health services, and increase the capacity of local boards of health (LBOH) to promote healthy people and healthy communities.
[ARC 1925C, IAB 4/1/15, effective 7/1/15]

641—80.2(135) Definitions. For the purposes of these rules, the following definitions apply:

"Allocation" means the process to distribute funds.

"Appropriation" means the funding category.

"Authorized agency" means a contractor or a private nonprofit or governmental organization delivering all or part of the LPHS funded by the LPHS contract.

"Community" means the aggregate of persons with common characteristics such as race, ethnicity, age, or occupation or other similarities such as location.

"Consumer" means an individual, family, or community utilizing essential public health services through the LPHS contract.

"Contractor" means a local board of health (LBOH).

"Core public health functions" means the functions of assessment, policy development, and assurance:

1. Assessment means regular collection, analysis, interpretation, and communication of information about health conditions, risks, and assets in a community.

2. Policy development means development, implementation, and evaluation of plans and policies, for public health in general and priority health needs in particular, in a manner that incorporates scientific information and community values in accordance with state public health policy.

3. Assurance means ensuring, by encouragement, regulation, or direct action, that programs and interventions which maintain and improve health are carried out.

"Department" means the Iowa department of public health.

"Elderly" means an individual aged 60 years and older.

"Essential public health services" means activities carried out by the authorized agency fulfilling core public health functions. Essential public health services include:

1. Monitoring health status to identify and solve community health problems.

2. Diagnosing and investigating health problems and health hazards in the community.

3. Informing, educating and empowering people about health issues.

4. Mobilizing community partnerships and action to identify and solve health problems.

5. Developing policies and plans that support individual and community health efforts.

6. Enforcing laws and regulations that protect health and ensure safety.

7. Linking people to needed health services and assuring the provision of health care when otherwise unavailable.

8. Assuring a competent public health and personal health care workforce.

9. Evaluating effectiveness, accessibility, and quality of personal and population-based health services.

10. Researching for new insights and innovative solutions to health problems.

"Evaluation" means the process to measure the effectiveness of interventions by measuring outcomes against previously established goals and objectives.

"Financial resources" means the unrestricted assets owned by a consumer and, if applicable, the consumer's spouse. The place of residence and one vehicle are exempt from consideration of resources.

"Formula" means the mathematical calculation applied to the state appropriation to determine the amount of available funds to be distributed to each county.

"Health promotion" means organizational, economic and environmental supports and education to stimulate healthy behaviors in individuals, groups or communities.

“*Home care aide*” means an individual who is trained and supervised to provide services, care, and emotional support to consumers in the home or in the community.

“*Income*” means all sources of revenue for the consumer and, if applicable, the consumer’s spouse.

“*Local board of health*” or “*LBOH*” means a county, city or district board of health as defined in Iowa Code section 137.102.

“*Low income*” means the U.S. Census Bureau’s Small Area Income and Poverty Estimates (SAIPE) (All Ages in Poverty) used to determine low income.

“*LPHS*” means local public health services.

“*Nonprofit*” means an entity meeting the requirements for tax-exempt status under the U.S. Internal Revenue Code.

“*Orientation*” means a period or process of introduction and adjustment to adapt the individual’s knowledge and skills from prior education to the individual’s current job duties.

“*Outcome*” means an action or event that follows as a result or consequence of the provision of a service or support.

“*Population-based services*” means interventions or activities for a community to promote health and to prevent disease, injury, disability, premature death, and exposure to environmental hazards.

“*Procedures*” means the steps to be taken to implement a policy.

“*Restricted assets*” means assets typically involving a penalty for early withdrawal, such as IRA accounts, KEOGH accounts, 401(k) accounts, employee retirement accounts, and other deferred tax protected assets involving a penalty for early withdrawal.

“*Sliding fee scale*” means a scale of consumer fee responsibility based on an assessment of the consumer’s ability to pay all or a portion of the charge for services.

“*Unrestricted assets*” means assets that can be converted to cash.

“*Vulnerable population*” means individuals or groups in the community who are unable to promote and protect their personal or environmental health.

[ARC 1925C, IAB 4/1/15, effective 7/1/15; ARC 3747C, IAB 4/11/18, effective 5/16/18; see Delay note at end of chapter]

641—80.3(135) Local public health services (LPHS). Local public health services improve the health of the entire community; prevent illness; enhance the quality of life; provide services to safeguard the health and wellness of the community; reduce, prevent, and delay institutionalization of consumers; and preserve and protect families.

80.3(1) Priority population. The LPHS contract serves individuals throughout the lifespan and prioritizes service to vulnerable populations in Iowa.

80.3(2) Appropriations. The fiscal appropriations which assist in supporting LPHS are determined annually by the general assembly.

80.3(3) Contractor assurance. In order to receive funding, the contractor shall provide to the department assurance that authorized agencies meet all applicable federal, state, and local requirements. The contractor may directly provide or subcontract all or part of the delivery of services. The contractor shall ensure that each authorized agency complies with Title IV of the Civil Rights Act, the Americans with Disabilities Act of 1990 (ADA), and Section 504 of the Rehabilitation Act of 1973 and with affirmative action requirements. In addition, the contractor shall ensure that each authorized agency has, at a minimum, the following:

- a. A governing board;
- b. Program policies and procedures;
- c. A consumer appeals process;
- d. Records appropriate to the level of consumer care;
- e. Evidence of staff supervision;
- f. Personnel policies and procedures which, at a minimum, include:
 - (1) Delegation of authority and responsibility for agency administration;
 - (2) A staff training program for the identification and reporting of child and dependent adult abuse to the department pursuant to Iowa Code sections 232.69 and 235B.3;
 - (3) An employee grievance procedure;

- (4) Annual employee performance evaluations;
- (5) A nondiscrimination policy;
- (6) An employee orientation program; and
- (7) Current job descriptions;

g. Fiscal management, which shall, at a minimum, include:

- (1) An annual budget;
- (2) Fiscal policies and procedures which follow generally accepted accounting practices; and
- (3) An annual audit performed according to usual and customary accounting principles and practices;

h. Evaluation of agency and program activities which shall, at a minimum, include:

- (1) Evidence of an annual evaluation; and
- (2) Methods of reporting outcomes of evaluation to the LBOH.

80.3(4) *Coordination of public health services.*

a. The authorized agency is responsible for determining the ability of a job applicant to meet the requirements outlined in the job description. At a minimum, individuals responsible for coordinating public health services shall meet one of the following criteria:

- (1) Be a registered nurse (RN) who is licensed to practice nursing in the state of Iowa and who has a recommended minimum of two years of related public health experience; or
- (2) Possess a bachelor's degree or higher in public health, health administration, nursing, health and human services, or other applicable field from an accredited college or university; or
- (3) Be an individual with two years of related public health experience.

b. Individuals who are responsible for the coordination of public health services on or before June 30, 2015, are exempt from the criteria in paragraph 80.3(4) "a."

80.3(5) *Coordination of home care aide services.*

a. The authorized agency is responsible for determining the ability of a job applicant to meet the requirements outlined in the job description. At a minimum, individuals performing coordination of home care aide services shall meet one of the following criteria:

- (1) Be a registered nurse (RN) licensed to practice nursing in the state of Iowa; or
- (2) Possess a bachelor's degree or higher in public health, health administration, nursing, health and human services, or other applicable field from an accredited college or university; or
- (3) Be a licensed practical nurse (LPN) licensed to practice nursing in the state of Iowa; or
- (4) Be an individual with two years of related public health experience.

b. Individuals who are responsible for the coordination of home care aide services on or before June 30, 2015, are exempt from the criteria in paragraph 80.3(5) "a."

80.3(6) *Home care aide services.*

a. The authorized agency shall ensure that each individual assigned to perform home care aide services meets one of the following:

(1) Be an individual who has completed orientation to home care in accordance with agency policy. At a minimum, orientation shall include four hours on the role of the home care aide; two hours on communication; two hours on understanding basic human needs; two hours on maintaining a healthy environment; two hours on infection control in the home; and one hour on emergency procedures. The individual shall have successfully passed an agency written test and demonstrated the ability to perform skills for the assigned tasks; or

(2) Be an individual who possesses a license to practice nursing as an LPN or RN in the state of Iowa.

b. Individuals who were hired under the requirements of Chapter 80 on or before May 16, 2018, are exempt from the criteria in paragraph 80.3(6) "a."

c. The authorized agency shall ensure that services or tasks assigned are appropriate to the individual's prior education and training.

d. The authorized agency shall ensure documentation of each home care aide's completion of at least 12 hours of annual in-service (prorated to employment).

e. The authorized agency shall establish policies for supervision of home care aides.

- f.* The authorized agency shall maintain records for each consumer. The records shall include:
- (1) An initial assessment;
 - (2) A plan of care;
 - (3) Assignment of home care aide;
 - (4) Assignment of tasks;
 - (5) Reassessment;
 - (6) An update of the plan of care;
 - (7) Home care aide documentation; and
 - (8) Documentation of supervision of home care aides.

[ARC 1925C, IAB 4/1/15, effective 7/1/15; ARC 3747C, IAB 4/11/18, effective 5/16/18; see Delay note at end of chapter]

641—80.4(135) Utilization of LPHS contract funding. The contractor may bill public health activities to the LPHS contract based on the identified needs of the community.

80.4(1) Planning process. Annually, the contractor shall initiate a planning process with input from authorized agencies in order for the contractor to identify the utilization of LPHS contract funding.

80.4(2) Funder of last resort. The LPHS contract shall be billed as the funder of last resort.

- a.* The LPHS contract shall be billed at the authorized agency's cost or charge, whichever is less.
- b.* The LPHS contract shall not be billed for services eligible for third-party reimbursement (e.g., Medicare, Medicaid, private insurance, approved Iowa waivers, or other federal or state funds).
- c.* The LPHS contract shall not be billed for the balance between the authorized agency cost or charge, whichever is less, and the allowed reimbursement from a third-party payer.
- d.* The LPHS contract shall not be billed for fees waived by the authorized agency.
- e.* The LPHS contract shall not be billed for services provided in a previous fiscal year.

80.4(3) Cost analysis. The authorized agency shall complete, at a minimum, an annual cost report for each approved LPHS contract activity using a method approved by the department. The authorized agency shall maintain documentation to support each cost report. Expenses to be included in an annual cost report must be documented by the agency as received before the expenses can be included in the cost report.

80.4(4) Fees and donations.

- a.* Authorized agencies shall use fees billed and donations received from consumers to support the activities billed to the LPHS contract.
- b.* Fees for services provided shall be based on a financial assessment which determines the consumer's financial responsibility.
- c.* Fees for services may be established by the authorized agency except for services described in subparagraph 80.4(4) "f"(6).
- d.* Donations shall be accepted.
- e.* A financial assessment that considers financial resources and income and determines the consumer's financial responsibility shall be completed for nursing (skilled and health maintenance) activities and all home care aide activities.
 - (1) The financial assessment shall be updated annually by the authorized agency.
 - (2) An authorized agency may consider additional health care-related expenses or financial resources above \$10,000 when determining the consumer's fee according to an agency's policy.
 - (3) Restricted assets shall not be considered as a resource in the determination of a consumer's financial responsibility for services.
 - (4) Unrestricted assets shall be considered in the determination of a consumer's financial responsibility for services in the sliding fee calculation.
- f.* Sliding fee scale. The following instructions apply to the use of the sliding fee scale.
 - (1) The authorized agency shall establish a sliding fee scale for all home care aide activities and nursing (skilled and health maintenance) activities.
 - (2) The sliding fee scale shall be based on the authorized agency's charge for services.
 - (3) The authorized agency shall determine the amount the consumer will pay according to the sliding fee scale prior to providing the service.

(4) A fee shall be charged to consumers who have an income at or above 200 percent of the most recent federal poverty guidelines.

(5) No fee shall be charged to consumers who have an income at or below 75 percent of the most recent federal poverty guidelines and have financial resources of \$10,000 or less.

(6) No fee shall be charged for communicable disease follow-up services.

(7) An authorized agency may charge a fee according to the authorized agency's policy for services other than those described in subparagraphs 80.4(4) "f"(1) to (6).

80.4(5) *Alternative plan.* A request and written plan is required for the use of the LPHS contract funds for any activity that is not one of the current activities identified in the contract documents. The request and plan shall be based on an assessment of the needs of the community and shall be submitted by the contractor to the department for approval. The plan shall:

- a. Identify essential public health services to be delivered;
- b. Describe the activity to be delivered;
- c. Identify target populations to be served; and
- d. Describe the anticipated impact due to the use of an alternative plan.

80.4(6) *Reallocation.* The department will annually determine the potential for unused funds from contracts. If funds are available, reallocation of the funds shall be at the discretion of the department. [ARC 1925C, IAB 4/1/15, effective 7/1/15; ARC 3747C, IAB 4/11/18, effective 5/16/18; see Delay note at end of chapter]

641—80.5(135) Right to appeal.

80.5(1) *Denial, reduction or termination of services.*

a. When an authorized agency denies, reduces or terminates services funded by the LPHS contract against the wishes of a consumer, the authorized agency shall notify the consumer of the following:

- (1) The action taken;
- (2) The reason for the action; and
- (3) The consumer's right to appeal.

b. If a consumer files an appeal, the authorized agency shall provide services to the consumer throughout the appeals process, unless the agency receives a waiver from the department pending the outcome of the appeal.

80.5(2) *Local appeals process.*

a. The authorized agency shall have a written procedure through which consumers funded by the LPHS contract may appeal to the contractor. The written procedure shall, at a minimum, include:

- (1) The method of notification of the right to appeal;
- (2) The procedure for conducting the appeal;
- (3) Time limits for each step;
- (4) Notification of the consumer's right to appeal to the contractor; and
- (5) Notification of the outcome of the appeal. The notification shall include the facts used to reach the decision and the conclusions drawn from the facts to support the decision of the authorized agency.

b. The written appeals procedure and the record of appeals filed (including the record and disposition of each) shall be available for inspection by authorized representatives of the department.

80.5(3) *Appeal to department.*

a. If a consumer is dissatisfied with the decision of the local appeal, the consumer may appeal to the Iowa department of public health within 15 days of the receipt of the local contractor's appeal decision. The appeal shall be made in writing and sent by certified mail, return receipt requested, to the Division Director, Division of Health Promotion and Chronic Disease Prevention, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

b. Department review. The department shall evaluate the appeal based upon the merits of the local appeal documentation. A department decision affirming, reserving, or modifying the local appeal decision shall be issued within 30 days of the receipt of all local appeal documentation. The department

decision shall be in writing and sent by certified mail, return receipt requested, to the consumer, the contractor, and the authorized agency.

80.5(4) *Further appeal.* The consumer may appeal the department's decision within 10 days of the receipt of the department's decision. The appeal shall be made in writing and sent to the Director, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. Upon receipt of an appeal that meets contested case status, the department shall forward the appeal within 5 working days to the department of inspections and appeals pursuant to the rules adopted by the department of inspections and appeals regarding the transmission of contested cases. The continued process for appeals shall be governed by 641—Chapter 173, Iowa Administrative Code.

[ARC 1925C, IAB 4/1/15, effective 7/1/15; ARC 3747C, IAB 4/11/18, effective 5/16/18; see Delay note at end of chapter]

641—80.6(135) Essential public health service funds.

80.6(1) *Purpose.* The purposes of essential public health service funds are to provide essential public health services that reduce risks and to invest in promoting and protecting good health over the course of a lifetime with a priority given to older Iowans and vulnerable populations.

80.6(2) *Allocation for essential public health service funds.* The appropriation to each county board of health is determined by the following formula:

a. Eighteen percent of the total allocation shall be divided so that an equal amount is available for use in each county in the state.

b. Eight percent of the total allocation shall be allocated to each county according to the county's population based upon the published data by the U.S. Census Bureau, which is the data available three months prior to the release of the LPHS application.

c. Forty-four percent of the total allocation shall be allocated according to the proportion of state residents who are elderly persons living in the county based upon the bridged-race population estimates produced by the U.S. Census Bureau in collaboration with the National Center for Health Statistics (NCHS).

d. Thirty percent of the total allocation shall be allocated according to the proportion of state residents who are low-income persons living in the county based upon the U.S. Census Bureau's small area income and poverty estimates (SAIPE).

[ARC 1925C, IAB 4/1/15, effective 7/1/15; ARC 3747C, IAB 4/11/18, effective 5/16/18; see Delay note at end of chapter]

These rules are intended to implement Iowa Code subsection 135.11(13).

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[Filed emergency 7/1/86—published 7/16/86, effective 7/1/86]

[Filed emergency 9/19/86—published 10/8/86, effective 9/19/86]

[Filed emergency 7/10/87—published 7/29/87, effective 7/10/87]

[Filed emergency 6/25/91—published 7/10/91, effective 7/1/91]

[Filed 7/14/94, Notice 4/27/94—published 8/3/94, effective 9/7/94]

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[Filed 3/16/07, Notice 1/31/07—published 4/11/07, effective 7/1/07]

[Filed ARC 1925C (Notice ARC 1839C, IAB 1/21/15), IAB 4/1/15, effective 7/1/15]

[Filed ARC 3747C (Notice ARC 3577C, IAB 1/17/18), IAB 4/11/18, effective 5/16/18]¹

¹ May 16, 2018, effective date of ARC 3747C [80.2, 80.3, 80.4(4)“f”(6), 80.5(2)“a”(4), 80.6] delayed until the adjournment of the 2019 General Assembly by the Administrative Rules Review Committee at its meeting held May 8, 2018.

WORKFORCE DEVELOPMENT DEPARTMENT[871]

[Prior to 9/24/86, see Employment Security[370], renamed Job Service Division[345]
under the “umbrella” of Department of Employment Services by 1986 Iowa Acts, chapter 1245]
[Prior to 3/12/97, see Job Service Division[345],
renamed Department of Workforce Development by 1996 Iowa Acts, chapter 1186]

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CHAPTER 24
CLAIMS AND BENEFITS

[Prior to 11/17/75, Ch 3]

[Prior to 9/24/86, Employment Security[370]]

[The filed emergency amendments were rescinded and the amendments to
Chapter 4 were adopted following Notice, 12/31/86 IAB, effective 2/4/87]

[Prior to 3/12/97, Job Service Division [345] Ch 4]

871—24.1(96) Definitions. Unless the context otherwise requires, the terms used in these rules shall have the following meaning. All terms which are defined in Iowa Code chapter 96 shall be construed as they are defined in Iowa Code chapter 96.

24.1(1) Additional claim. An application for determination of eligibility filed on an established claim which follows a period of employment.

24.1(2) Administrative office (state). Same as central office.

24.1(3) Agent state. The state in which a worker claims benefits against another (liable) state through the facilities of the state employment security agency. See also liable state.

24.1(4) Reserved.

24.1(5) Annual benefit amount. See maximum annual benefits under benefits.

24.1(6) Appeals. See rule 871—26.1(96).

a. Administrative appeal. A request for a review by an appeals authority of a state employment security agency's determination on a claim for benefits, on a status report, or on an employer's contribution rate, or a request for a review by a higher appeals authority of a decision made by a lower appeals authority.

b. Employment appeal board of the department of inspections and appeals. The employment appeal board of the department of inspections and appeals is established to hear and decide disputed claims. The employment appeal board of the department of inspections and appeals will consist of three members appointed by the governor with the approval of two-thirds of the members of the senate. One member will represent the general public, one member will represent employers, and one member will represent employees.

This subrule is intended to implement Iowa Code section 96.6(4).

24.1(7) Applicant. Any individual applying for work at a workforce development center.

24.1(8) and 24.1(9) Reserved.

24.1(10) Average weekly wages. See wages.

24.1(11) Base period. The period of time in which the amount of wages paid to an individual in insured work which determines an individual's eligibility for, and the amount and duration of, benefits. The base period consists of the first four of the last five completed calendar quarters immediately preceding the calendar quarter in which the individual's claim for benefits is effective with the following exception. The department shall exclude three or more calendar quarters from the individual's base period in which the individual received workers' compensation or indemnity insurance benefits and substitute consecutive calendar quarters immediately preceding the base period in which the individual did not receive workers' compensation or indemnity insurance benefits. This exception applies under the following conditions:

a. The individual did not work in and receive wages from insured work for three calendar quarters of the base period, or

b. The individual did not work in and receive wages from insured work for two calendar quarters and lacked qualifying wages from insured work to establish a valid claim for benefits during another quarter of the base period.

24.1(12) Base period employer and chargeable employer.

a. Base period employer. An employer who paid wages for employment to a claimant during the claimant's base period or an employer who is responsible for an individual's wages pursuant to Iowa Code section 96.3, subsection 5, pertaining to workers' compensation benefits.

b. Chargeable employer. An employer who had base period wages accruing to the employer's account due to an employer liability determination.

24.1(13) Benefit amount.

a. Maximum weekly benefit amount. The highest weekly benefit amount provided in a state employment security law.

b. Minimum weekly benefit amount. The lowest weekly benefit amount for a week of total unemployment provided in a state employment security law.

c. Weekly benefit amount. The full amount of benefits a claimant is entitled to receive for a week of total unemployment.

24.1(14) Benefit decision. The decision reached by a lower or higher appeals authority with respect to an appealed claim. See also benefit determination, under determination.

24.1(15) Benefit determination. See determination.

24.1(16) Benefit eligibility conditions. Statutory requirements which must be satisfied by an individual with respect to each week of unemployment before benefits can be received.

24.1(17) Benefit formula. The combination of mathematical factors specified in the state employment security law as the basis for computing an individual's weekly benefit amount and maximum benefit amount.

a. Annual wage formula. A benefit formula which uses the claimant's total wages in insured work for a one-year period for computing the claimant's maximum benefit amount.

b. High quarter formula. A benefit formula which uses, for determining a claimant's weekly benefit amount, the quarter of the base period in which the claimant's wages in insured work were highest.

24.1(18) Benefits. Money payments to an individual with respect to unemployment.

a. Regular benefits. Benefits payable to an individual under this or any other state law (including benefits payable to federal civilian employees and ex-servicemembers pursuant to 5 U.S.C., chapter 85) other than extended benefits.

b. Extended benefits. Benefits payable to an individual (including benefits payable to federal civilian employees pursuant to 5 U.S.C., chapter 85) for weeks of unemployment which begin in an extended benefit period, which is a period when extended benefits are paid in this state.

24.1(19) Benefit wages. See wages.

24.1(20) Benefit year. That period to which the limitation of maximum duration of benefits is applicable, a year or approximately a year.

24.1(21) Benefit year, individual. The benefit year is a period of 365 days (366 in a leap year) beginning with and including the starting date of the benefit year. The starting date of the benefit year is always on Sunday and is the Sunday of the current week in which the claimant first files a valid claim.

24.1(22) Calendar week. See week.

24.1(23) Central office. The state administrative office of the division of unemployment insurance services of the department of workforce development.

24.1(24) Reserved.

24.1(25) Claim. A request for benefit payment; also used to mean any notice filed by an individual to establish insured status or a notice filed by an individual to inform the administrative agency of the individual's unemployment.

a. A claim may be filed under any one or more of the following programs:

(1) The state program of unemployment insurance (UI),

(2) The federal program of unemployment compensation for federal employees (UCFE) established by Title V of the United States Code, and

(3) The federal program of unemployment compensation for ex-military personnel (UCX) established by Title V of the United States Code.

b. Unless otherwise specified, the term claim as used in the following definitions is applicable equally to each of the three programs.

(1) *Additional UI, UCFE, or UCX claim.* A notice filed at the beginning of a second or subsequent series of claims within a benefit year, when a break in job attachment has occurred since the last claim was filed, concerning which state procedures require that separation information be obtained.

(2) *Additional claim.* An application for determination of eligibility filed on an established claim which follows a period of employment.

(3) *Additional interstate claim.* A claim filed by an interstate claimant within the benefit year of a liable state in which insured status has already been established, after a break in the continuity of filing continued interstate claims, or to establish a new series of claims against that liable state from a new agent state.

(4) *Appealed claim.* See appeal, administrative.

(5) *Combined wage claim.* A claim filed under the interstate wage combining plans. See interstate agreement.

(6) *Compensable claim.* A request for benefit payment which certifies the completion of a week of total or partial unemployment to satisfy a claim benefit for a compensable week.

(7) *Contested claim.* A claim which has been protested by an employer, the department or an interested party regarding the claimant's right to benefits.

(8) *Continued claim.* A continued claim is a request for benefit payment. A continued claim is a compensable claim. It is an electronic, oral or written application which certifies to the completion of a week of total unemployment or partial employment to claim benefits for a compensable week.

(9) *Initial claim.* An application for a determination of eligibility for benefits which determination sets forth the weekly benefit amount and duration of benefits for a benefit year.

(10) *Initial interstate claim.* A new or an additional interstate claim.

(11) *Interstate claim.* A claim filed in one state (agent state) against another state (liable state).

(12) *Intrastate claim.* A claim filed in the state of residence against wages earned in that state or by an interstate commuter.

(13) *Mail claim.* Rescinded IAB 8/16/17, effective 9/20/17.

(14) *New claim.* An application for the establishment of a benefit year.

(15) *New interstate claim.* The first interstate claim filed by a claimant against a liable state which serves as a request for determination of insured status.

(16) *New intrastate extended benefits claim.* The first intrastate claim filed for extended benefits in a new extended benefits period by a claimant in state having extended benefits provisions in its law. Each time such provisions become effective it is considered a new extended benefit period. Such first claims will include those which become effective, without any break in the benefit series, for the week following the week in which regular benefits are exhausted or are terminated by the end of the benefit year.

(17) *New UI, UCFE, or UCX claim.* A request for determination of insured status for purposes of establishing a new benefit year.

(18) *Reopened claim.* The first continued claim in a second or subsequent series of claims in a benefit year when no additional claim is reportable. An application for determination of eligibility for benefits and which certifies to the beginning date of a period of unemployment which falls within a benefit year previously established for which a continued claim or claims may be filed and which follows a break in a claim series previously established, due to illness, disqualification, unavailability, or failure to report for any reason other than reemployment.

(19) *Second benefit year claim.* A new claim with an effective date for a second benefit year which is filed within 180 calendar days following the last week of the individual's previous benefit year. The individual is notified of the expiration of the previous benefit year.

(20) *Transitional claim.* Rescinded IAB 1/3/18, effective 2/7/18.

(21) *Valid UI, UCFE or UCX claim.* A new claim on which a determination has been made that the individual has met the wage or employment requirements (and, under some laws, other eligibility conditions) to establish a benefit year.

(22) *Voice response continued claim.* Rescinded IAB 8/6/03, effective 9/10/03.

24.1(26) Claimant.

- a. An individual who has filed a request for determination of insured status or a new claim, or
- b. An individual who has filed an initial claim unless the claim is found to be invalid or the benefit year has expired.

24.1(27) Reserved.

24.1(28) *Claim series.* A series of claims filed for continuous weeks of unemployment or for a period of unemployment during which the lapse in compensability or in reporting is deemed by the state insufficient to interrupt the series.

24.1(29) *Compensable claim.* See claim.

24.1(30) *Compensable week.* See week.

24.1(31) *Compensation.* Same as benefits.

24.1(32) *Contested claim.* See claim.

24.1(33) *Continued claim.* See claim.

24.1(34) *Covered employment.* Same as insured work.

24.1(35) *Covered worker.* An individual who has earned wages in insured work.

24.1(36) *Day.* The period of time between any midnight and the midnight following.

24.1(37) *Department.* The chief executive officer of the department of workforce development is the director who shall be appointed by the governor with the approval of two-thirds of the members of the senate. It shall be the duty of the director to administer Iowa Code chapter 96.

24.1(38) *Determination.*

a. *Benefit determination.* A decision with respect to a request for determination of insured status, a notice of unemployment, or a claim for benefits.

b. *Coverage determination.* A determination as to whether an employing unit is a subject employer and whether service performed for it constitutes employment as defined under a state employment security law. See status determination.

c. *Determination of insured status.* A determination as to whether an individual meets the employment requirements necessary for the receipt of benefits; and, if so, such individual's weekly benefit amount and maximum benefit amount.

d. *Initial determination.* The first determination with respect to a claim or a request for determination of insured status.

e. *Monetary determination.* Same as determination of insured status.

f. *Nonmonetary determination.* A determination as to whether a claimant is barred from receiving benefits for reasons other than those affecting the claimant's insured status.

g. *Reconsidered determination.* Same as redetermination.

h. *Redetermination.* A determination made with respect to a claimant after reconsideration by the initial determining authority.

i. *Status determination.* A determination as to whether an employing unit whose status is not known is a subject employer.

24.1(39) *Disqualification provisions.* Those provisions of a state employment security law that set forth the conditions that bar an individual from receiving benefits for a specified period or cancel or reduce the individual's benefits or credits.

24.1(40) *Duration of benefits.* The number of weeks for which benefits are paid or payable for total unemployment in a benefit year. Because there may be deductible wages and other compensation, duration is often described in terms of the total amount of benefits arrived at by multiplying the weekly benefit amount by the number of weeks of total unemployment.

a. *Actual duration.* The number of full weeks of benefits received by an individual, or the equivalent thereof expressed in terms of dollars.

b. *Maximum duration.* The highest number of weeks of total unemployment for which benefits are payable to any individual in a benefit year under a state employment security law.

24.1(41) *Earnings limit.* An amount equal to the weekly benefit amount plus \$15.

24.1(42) *Eligibility requirements.* Same as benefit eligibility conditions.

24.1(43) *Employment interview.* A conversation between an applicant and an interviewer directed toward obtaining and recording information pertinent to classification and selection, and giving information pertinent to job seeking.

24.1(44) *Employment office.* An office maintained by the department of workforce development in accordance with Iowa Code sections 96.12 and 96.25.

24.1(45) *Employment security administration fund.* See funds.

24.1(46) *Employment security law.* A body of law which establishes a free public employment service, or a system of unemployment insurance, or both and which may also establish other systems compensating for wage loss, such as temporary disability insurance in Iowa Code chapter 96.

24.1(47) *Employment security program.* The federal-state program comprising public employment services and unemployment insurance.

24.1(48) *Fact-finding interview.* A face-to-face or telephonic discussion between interested parties and a department representative for the purpose of obtaining from the claimant a statement containing information on a specific eligibility or disqualification issue. This differs from an eligibility review interview in that a specific issue must exist as a result of a statement made by either the claimant, the liable state, an employer, or the staff of the department.

24.1(49) *First UI, UCFE, or UCX payment.* A payment issued to a claimant for the first compensable week of unemployment in a benefit year.

24.1(50) *Full-time week.* See week.

24.1(51) *Funds.*

a. Administrative funds. Funds made available from federal, state, local and other sources to meet the cost of state employment security administration.

b. Contingency fund. An amount of money appropriated by Congress to meet certain unpredictable increases in costs of administration by the state employment security agencies arising from increases in workload or other specified causes.

c. Special employment security contingency fund. A contingency fund established pursuant to Iowa Code section 96.13(3) into which all interest, fines, and penalties are paid.

d. Employment security administration fund. A special fund in the state treasury, established by state law, in which are deposited moneys granted by the manpower administration and monies from other sources, for the purpose of paying the cost of administering the state employment security program.

e. Title V funds. Funds appropriated by Congress to pay unemployment insurance benefits under Title V of the United States Code to federal, civilian and military employees.

f. Unemployment fund. A special fund established under a state employment security law for the receipt and management of contributions and the payment of unemployment account, clearing account, and unemployment trust fund account.

g. Unemployment trust fund. A fund established in the treasury of the United States which contains all moneys deposited with the treasury by state employment security agencies to the credit of their unemployment fund accounts and by the railroad retirement board to the credit of the railroad unemployment insurance account.

24.1(52) *Handbook.* The handbook for interstate claims-taking provided by the Employment and Training Administration of the United States Department of Labor.

24.1(53) *High quarter formula.* See benefit formula.

24.1(54) to 24.1(56) Reserved.

24.1(57) *Individual base period.* See base period.

24.1(58) *Individual benefit year.* See benefit year.

24.1(59) *Initial claim.* See claim.

24.1(60) *Initial determination.* See determination.

24.1(61) *Insured unemployment.* Unemployment during a given week for which benefits are claimed under the state employment security program, the unemployment compensation for federal employees program, the unemployment compensation for veterans program, or the railroad unemployment insurance program.

24.1(62) *Insured work.* Employment, as defined in a state employment security law, performed for a subject employer, or federal employment as defined in the Social Security Act.

24.1(63) *Insured worker.* An individual who has had sufficient insured work in such individual's base period to meet the employment requirements for receipt of benefits under a state employment security law.

24.1(64) *Interstate agreement.*

a. Interstate benefit payment plan. The plan under which each state acts as an agent for every other state in taking claims for individuals who are not in the state in which they earned their base period wages.

b. Interstate reciprocal coverage agreement. An administrative interstate agreement, permitted under most state employment security laws, which provides for the election of coverage of services under specified conditions which may or may not constitute an exception to the mandatory coverage provisions of the state law.

c. Wage-combining agreements. An interstate agreement which allows workers who lack qualifying wages in any one state, or who qualify for less than maximum benefits in one or more states, to qualify or to increase benefits by combining wages from all states.

24.1(65) *Interstate claim.* See claim.

24.1(66) *Interstate claimant.* An individual who files a claim for benefits in an agent state on the basis of employment covered by the employment security law of a liable state.

24.1(67) *Benefit rights information.* Information provided to a claimant for the purpose of explaining the claimant's rights and responsibilities under the law. Such information may be given on a group basis or on an individual basis or the information may be provided electronically.

24.1(68) *Office.* Rescinded IAB 8/16/17, effective 9/20/17.

24.1(69) *Lag quarter.* The completed quarter between a claimant's base period and the quarter which includes the beginning date of such claimant's benefit year.

24.1(70) *Layoffs.* See separations.

24.1(71) *Liable state.* Any state against which a worker claims benefits through the facilities of a workforce development center or the job service division of another (agent) state. See also agent state.

24.1(72) *Mail claim.* Rescinded IAB 8/16/17, effective 9/20/17.

24.1(73) *Mass separation.* The separation from a given employing unit of a large number of workers at approximately the same time and for a reason common to all such workers.

24.1(74) *Mass separation notice.* A report of a mass separation sent to the local workforce development center by an employer, stating the number of workers separated and listing their names and other required data. Such a notice serves as a substitute for individual separation notices.

24.1(75) *Maximum benefit amount.* The maximum total amount of benefits an individual may receive during the individual's benefit year.

24.1(76) *Maximum benefits.* The maximum total amount of benefits payable to a claimant during the claimant's benefit year.

24.1(77) *Maximum weekly benefit amount.* See benefit amount.

24.1(78) *Microfiche.* Rescinded IAB 8/6/03, effective 9/10/03.

24.1(79) *Military separations.* See separations.

24.1(80) *Minimum weekly benefit amount.* See benefit amount.

24.1(81) *Month.* The time beginning with any day of one month to the corresponding day of the next month, or if there is no corresponding day, then through the last day of the next month.

24.1(82) *Multistate worker.* An individual who performs service for one employer in more than one state.

24.1(83) *New claim.* See claim.

24.1(84) *Noncovered employment.* Excluded employment, or employment for an employer below the size-of-firm coverage requirements of the state employment security law.

24.1(85) *Notice of separation.* A report submitted by an employer at the time when a worker is separated from employment, on which the employer indicates the dates of the last day worked, the separation date and the reason the worker was separated.

24.1(86) *Odd job earnings.* Any earnings which a claimant may have during a week of unemployment as a result of temporary work with an employing unit other than the claimant's regular employing unit.

24.1(87) *Opening.* A single job for which a workforce development center has on file a request to select and refer an applicant or applicants.

24.1(88) *Outstanding job order request.* An active request for referral of one or more applicants to fill one or more job openings in a single occupational classification; also, the record of such request.

24.1(89) *Clearance order.* Rescinded IAB 8/6/03, effective 9/10/03.

24.1(90) *Partial benefits.* Benefits payable to an individual for a week of partial unemployment.

24.1(91) *Partial earnings allowance.* The amount of earnings that are disregarded in calculating a claimant's benefit for a week.

24.1(92) *Partial unemployment.* See week of unemployment.

24.1(93) *Part-time worker.* A person engaged in, or available only for, part-time work.

24.1(94) *Placement.* An acceptance by an employer of a person for a job as a direct result of workforce development center activities, provided the employment office has completed all of the following four steps: receipt of an order, prior to referral; selection of the person to be referred without designation by the employer of any particular individual or group of individuals; referral; and verification from a reliable source, preferably the employer, that a person referred has been hired by the employer and has entered on the job.

24.1(95) Reserved.

24.1(96) *Qualifying employment.* The amount of insured work which an individual must have had within a specified period in order to be an insured worker. See also benefit eligibility conditions.

24.1(97) *Qualifying wages.* See wages.

24.1(98) *Quits.* See separations.

24.1(99) *Railroad unemployment insurance account.* An account, established pursuant to the Railroad Unemployment Insurance Act, maintained in the federal unemployment trust fund for the payment of benefits provided in that Act.

24.1(100) *Readout.* Printed data from the claimant database or other types of records stored in the computer.

24.1(101) *Reciprocal coverage agreement.* See interstate agreements.

24.1(102) *Reconsidered determination.* Same as redetermination—see determination.

24.1(103) *Referee appeals.* See appeal, administrative. (Administrative law judge)

24.1(104) *Referral.* The act of arranging to bring to the attention of an employer (or another workforce development center) the qualifications of an applicant who is available for a job opening on file for which the applicant has been selected by a workforce development center.

24.1(105) *Registration.* The process of applying for work through an office of the department of workforce development.

24.1(106) *Report to determine liability.* Same as status report.

24.1(107) *Reporting requirements.* The rules of procedures of the department of workforce development concerning the frequency and time of required reporting by claimants.

24.1(108) *Renewal.* The transfer from the inactive to the active file of the application of an applicant who is again considered to be available for referral to job openings.

24.1(109) *Request for determination of insured status.* A request by an individual for a determination of insured status.

24.1(110) *Selection.* The process of choosing a qualified applicant for referral to a job by carefully analyzing and comparing employer requirements with applicant interests and abilities.

24.1(111) *Self-employment.*

24.1(112) *Self-filing (of claim).* The partial or complete filling out of a claim form or request for determination of insured status by the claimant.

24.1(113) *Separations.* All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

24.1(114) Short-time placement. A placement in a job which the employer expects to involve work in each of three days or less, whether or not consecutive.

24.1(115) Social security number. The identification number assigned to an individual by the Social Security Administration under the Social Security Act.

24.1(116) Status determination. See determination.

24.1(117) Supplemental benefit payment. A payment issued for the sole purpose of adjusting an underpayment for one or more previous weeks.

24.1(118) Taxable wages. See wages.

24.1(119) Total unemployment. See week of unemployment.

24.1(120) Reserved.

24.1(121) Transient. Rescinded IAB 1/3/18, effective 2/7/18.

24.1(122) Unemployment fund. See funds.

24.1(123) Unemployment trust fund. See funds.

24.1(124) Unemployment trust fund account. See accounts.

24.1(125) Valid claim. See claim.

24.1(126) Verification. The determination from a reliable source, preferably the employer, whether an applicant referred by a workforce development center has been hired by the employer and has entered on the job. In the case of applicants referred to seasonal agricultural openings, verification is considered complete when it is confirmed that a referred worker has been hired, even though confirmation of the worker's entry on the job may be lacking.

24.1(127) Visiting claimant. Rescinded IAB 1/3/18, effective 2/7/18.

24.1(128) Wage combining agreement. See interstate agreement.

24.1(129) Wage credits. Wages earned in insured work.

24.1(130) Wages. Average weekly wages.

a. For an individual worker, the result obtained by dividing the individual's total wages in a specified period either by the total number of weeks in the period or by the number of weeks for which wages were payable to the individual during the period.

b. For a group of workers, the result obtained by dividing the total wages for one or more quarters by the number of weeks in the period, and then dividing by the average monthly employment during the period.

24.1(131) Qualifying wages. The amount of wages a worker must have earned in insured work within a specified period in order to be an insured worker. See also benefit eligibility conditions.

24.1(132) Taxable wages. Wages subject to contribution under a state employment security law, or wages subject to tax under the federal Unemployment Tax Act.

24.1(133) Reserved.

24.1(134) Weekly indemnity insurance benefits. Payment for nonoccupational illness or injury pursuant to a benefit plan implemented by an employer.

24.1(135) Week. A seven-day period beginning at 12:01 a.m. on Sunday and terminating at midnight on the following Saturday.

a. Calendar week. A period of seven consecutive days usually ending at Saturday midnight, used by some state employment security agencies as a unit in the measurement of employment or unemployment.

b. Compensable week. A week for which benefits have been claimed.

c. Full-time week. The number of hours or days per week currently established by schedule, custom, or otherwise, as constituting a week of full-time work for the kind of service an individual performs for an employing unit.

24.1(136) *Weekly benefit amount.* See benefit amount, or,

24.1(137) *Weekly benefit amount.* The compensation payable to an individual, with respect to employment, under the employment security law of any state.

24.1(138) *Week of unemployment.* A week in which an individual performs less than full-time work for any employing unit if the wages payable with respect to such week are less than a specified amount (usually the weekly benefit amount), or,

24.1(139) *Week of unemployment.* A week during which an individual performs no work and earns no wages, except as indicated and has earnings which do not exceed the earnings limit.

a. Week of partial unemployment. A week in which an individual worked less than the regular full-time hours for such individual's regular employer, because of lack of work, and earned less than the weekly benefit amount (plus the partial earnings allowance, if any, in the state's definition of unemployment) but more than the partial earnings allowance, so that, if eligible for benefits, the claimant received less than such claimant's full weekly benefit amount plus \$15.

b. Week of part total unemployment. A week of otherwise total unemployment during which an individual has odd jobs or subsidiary work with earnings in excess of the amount specified in the state law as allowable without resulting in a reduction in the individual's benefit payment.

c. Week of total unemployment. A week in which an individual performs no work and earns no wages.

24.1(140) *Workload.* The measure of the volume of work for each functional area of the state agency; i.e., the number of contribution (payroll) reports processed, the number of claims taken, the number of applications for employment.

This rule is intended to implement Iowa Code sections 96.3(5), 96.3(7), 96.4(3), 96.5(5) "c," 96.6, 96.7(2) "a"(2), 96.11, 96.19(16), and 96.23.

[ARC 3116C, IAB 6/7/17, effective 7/12/17; ARC 3248C, IAB 8/2/17, effective 9/6/17; ARC 3265C, IAB 8/16/17, effective 9/20/17; ARC 3562C, IAB 1/3/18, effective 2/7/18; ARC 3811C, IAB 5/23/18, effective 6/27/18]

871—24.2(96) Procedures for workers desiring to file a claim for benefits for unemployment insurance.

24.2(1) Section 96.6 of the employment security law of Iowa states that claims for benefits shall be made in accordance with such rules as the department prescribes. The department of workforce development accordingly prescribes:

a. Following separation from work, any individual, in order to establish a benefit year during which the individual may receive benefits because of unemployment, shall file an initial claim for benefits electronically, in person at a local department office, or by other means prescribed by the department and register for work. A claim filed in accordance with this rule shall be deemed filed as of Sunday of the week in which the claim is filed.

b. When filing an initial claim for benefits, an individual must provide the following information to the department:

- (1) The name and complete mailing address of such individual's last employing unit or employer including work history for all employers within the individual's base period.
- (2) The location of the last job.
- (3) Last day of work.
- (4) The reason for separation from work.
- (5) That such individual is unemployed.
- (6) That the individual registers for work.

(7) The individual's last job occupation.

(8) Number, full name, social security number, date of birth, and relationship of any dependents claimed. The identity of an individual identified as a dependent shall be verified by the department before the individual is added to the claim as a dependent. As used in this subparagraph, "dependent" is defined as: spouse, son or daughter of the claimant, or a dependent of either; stepson or stepdaughter; foster child or child for whom claimant is a legal guardian; brother, sister, stepbrother, stepsister; father or mother of claimant or stepfather or stepmother of the claimant; son or daughter of a brother or sister of the claimant (nephew or niece); brother or sister of the father or mother of the claimant (uncle or aunt); son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the claimant; an individual who lived in the claimant's home as a member of the household for the whole year; cousin.

A "spouse" is defined as an individual who does not earn more than \$120 in gross wages in one week. The reference week for this monetary determination shall be the gross wages earned by the spouse in the calendar week immediately preceding the effective date of the claim.

A "dependent" means an individual who has been claimed for the preceding tax year on the claimant's income tax return. The same dependent shall not be claimed on two separate monetarily eligible concurrent established benefit years. An individual cannot claim a spouse as a dependent if the spouse has listed the claimant as a dependent on a current claim.

(9) The individual's social security number and alien registration number, if applicable.

(10) Such other information as required by the department.

c. All claimants on an initial claim shall state that they are registered for work and shall list their principal occupation. A group code will be assigned to the claimant to control the type of registration that is made. Code assignments will be based on all facts obtained at the time of the claim filing. A group code change can be made at any time during the benefit year if additional information is obtained by the agency. The group codes are:

(1) Group "3" claimants are workers who are employed on a reduced workweek or temporarily unemployed for a period, verified by the department, of four consecutive weeks or less, due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular "employer." This group pertains only to those individuals who worked full-time and will again work full-time if the individuals' employment, although temporarily suspended, has not been terminated. After a period of temporary unemployment, claimants in this group are reviewed for placement in group "5" or "6."

(2) Group "4" claimants are those individuals who have left employment in lieu of exercising their right to bump or oust a fellow employee with less seniority or priority from the fellow employee's job. Group "4" claimants shall have only the search for work provision of Iowa Code section 96.4(3) and the disqualification provision for failure to apply for or to accept suitable work of Iowa Code section 96.5(3) waived. The group "4" code shall not apply to weeks claimed under the extended benefit or federal supplemental compensation programs.

(3) Group "5" claimants are those individuals who are members of unions, trades, or professionals having their own placement facilities. Claimants assigned to this group will be registered for work. A paid-up membership must be maintained. Contact must be made weekly to check for available work. Loss of membership shall result in an assignment to group "6."

(4) Group "6" claimants are those individuals who do not otherwise meet the qualification group code "3," "4," or "5." This group must complete and document work searches made either in-person, online or by submitting a resumé.

(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 and will again work full-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."

(6) Group "8" claimants are workers who are part of a federally declared emergency. Once the emergency period expires, claimants in this group are reviewed for placement in group "3," "4," "5," or "6."

(7) Nothing in this rule shall be construed as prohibiting an authorized representative of the department from requiring claimants for unemployment insurance benefits to avail themselves of workforce development center referral and counseling services if deemed beneficial and necessary to obtain prompt reemployment, nor shall anything in this rule be construed to deny referral or counseling service to claimants for unemployment insurance benefits.

d. Reserved.

e. In order to maintain continuing eligibility for benefits during any continuous period of unemployment, an individual shall report as directed to do so by an authorized representative of the department. If the individual has moved to another locality, the individual may register and report in person at a workforce development center at the time previously specified for the reporting.

(1) An individual who files a weekly continued claim will have the benefit payment automatically deposited weekly on a debit card specified by the department.

(2) The department retains the ultimate authority to choose the method of reporting and payment.

f. After the initial claim has been filed, the claimant will receive from the local office or the administrative office a Form 65-5318, which is a notice of the action taken on the claim, and if such claimant is eligible for benefits this notice will state the date on which the benefit year will begin, the amount per week, and the maximum amount for which the claimant is eligible.

g. No benefit payment shall be allowed until the individual claiming benefits has completed a continued claim online or as otherwise directed by the department.

(1) The weekly continued claim shall be transmitted not earlier than 8 a.m. on the Sunday following the Saturday of the weekly reporting period and not later than close of business on the Friday following the weekly reporting period.

(2) An individual claiming benefits using the weekly continued claim system shall personally answer and record such claim on the system unless the individual is disabled and has received prior approval from the department.

(3) The individual shall set forth the following:

1. That the individual continues the claim for benefits;

2. That except as otherwise indicated, during the period covered by the claim, the individual was fully or partially unemployed, earned no gross wages and received no benefits, was able to work and available for work;

3. That the individual indicates the number of employers contacted for work, the contact information for each employer contacted, and the result of the contact;

4. That the individual knows the law provides penalties for false statements in connection with the claim;

5. That the individual has reported any job offer received during the period covered by the claim;

6. That the individual understands the individual's responsibility to review the individual's claim records to ensure there is no delay in filing the individual's weekly claim to remain in continuous reporting status. Failure to file claims each week will require a claimant to submit a claim application to reactivate the claim;

7. Other information required by the department.

h. Effective starting date for the benefit year.

(1) Filing for benefits shall be effective as of Sunday of the current calendar week in which, subsequent to the individual's separation from work, an individual files a claim for benefits.

(2) The claim may only be backdated prior to the first day of the calendar week in which the claimant does report and file a claim if the claimant filed an interstate claim against another state which has been determined as ineligible.

(3) When the benefit year expires on any day but Saturday, the effective date of the new claim is the Sunday of the current week in which the claim is filed even though it may overlap into the old benefit year up to six days. However, backdating shall not be allowed at the change of a calendar quarter if the backdating would cause an overlap of the same quarter in two base periods. When the overlap situation occurs, the effective date of the new claim may be postdated up to six days. If the claimant has benefits

remaining on the old claim, the claimant may be eligible for benefits for that period by extending the old benefit year up to six days.

i. An individual shall be entitled to partial benefits for any week of less than full-time work, provided the wages earned during such week are less than the individual's weekly benefit earning limit, plus \$15. If the individual has been placed on reduced employment the individual may be entitled to partial benefits, and should file a claim in accordance with the instructions pertaining to the partial claims procedure.

j. Reserved.

k. Any individual who is disqualified for benefits because of the individual's failure to report as directed to file a claim following the date specified may appeal to the department for the right to establish good cause for failure to report because of extraordinary circumstances. A representative of the department may deny the request and the decision may be appealed to an administrative law judge for a hearing and decision on the merits. If the petition is allowed the petitioner shall be allowed to file a claim for and receive full benefits for each week for which such claim is filed, if otherwise eligible.

24.2(2) Filing a claim for unemployment insurance benefits (not applicable to interstate claims).

a. A notice of claim filing, which includes the name and social security number of the individual claiming benefits, shall be sent to each base period employer on record and the last employer if different than the base period employer unless the separation issue has previously been adjudicated.

b. Even though the claims taker may believe that the claimant cannot meet the eligibility conditions required by statute, the claims taker shall in no instance refuse to accept a claim from any unemployed individual. If the claimant elects to file a claim, even though the claimant's eligibility may be questionable, the claim shall be accepted without hesitation. The claimant may be required to provide adequate proof of identification such as a driver's license, proof of citizenship, car registration, or union membership card or supply personally identifying information.

c. If a claim was filed in a previous quarter and was determined not eligible because of no wage records, or lack of qualifying earnings, a benefit year has not been established and a new claim will be taken. A new claim should not be taken if the claimant previously has filed an ineligible claim in the same quarter unless the claimant insists on filing after being advised of ineligibility. The claims taker shall explain or send notice to the claimant that another claim filed in the same quarter would also be determined as ineligible because additional wage credits (if any) would not be available until a subsequent quarter. The claimant should be advised to file a new claim during the first full week of the next calendar quarter.

d. If the check of the files does not disclose a previous claim and the claimant states that a claim has not been filed during the past year, a new claim shall be taken.

e. Partially unemployed claims.

(1) A partially unemployed individual shall file a claim for benefits in the same manner as an initial claim for unemployment insurance.

(2) Reporting wages. A partially unemployed individual shall report all wages which are earned for each week benefits are claimed.

(3) A claimant in a continuous reporting status, employed with the same employer, may exceed the claimant's weekly benefit amount plus \$15 for four consecutive weeks before the individual is required to file an additional claim for benefits.

f. If the check of the files does not disclose a monetarily valid claim in another state, a new claim shall be taken.

24.2(3) Filing a claim for unemployment insurance benefits (interstate only).

a. Initial interstate claims. All interstate claimants must file an Iowa claim electronically or through a department representative.

b. When the department is acting as an agent for another state unemployment insurance agency with respect to the filing of an initial claim for benefits, the department shall require an interstate claimant to complete and file an Initial Interstate Claim, Form 61-1000(IB-1), unless otherwise directed by the interstate handbook.

24.2(4) Cancellation of unemployment insurance claim.

a. A request for cancellation of an unemployment insurance claim may be made by the individual and be directed to the benefits bureau of the unemployment insurance services division. The statement must include the specific reason for the request and contain as much pertinent information as possible so that a decision can be made. A notice with the result of the request will be sent.

b. A cancellation request which is the result of employer coercion or intimidation shall be denied and the employer could be subjected to serious misdemeanor charges.

c. Cancellation requests within the ten-day protest period. The benefits bureau, upon review of the timely request and before payment is made, may cancel the claim for the following reasons:

(1) The individual found employment or returned to regular employment within the protest period.
 (2) Cancellation would allow the individual to refile at the change of a calendar quarter to obtain an increase in the weekly or maximum benefit amount or the individual would receive more entitlement from another state.

(3) The individual filed a claim in good faith under the assumption of being separated and no actual separation occurred.

(4) The individual did not want to establish a benefit year because of eligibility for a low weekly or maximum benefit amount.

d. Other valid reasons for cancellation whether or not ten-day protest period has expired.

(1) The individual has an unexpired unemployment insurance claim in another state and is eligible for a remaining balance of benefits.

(2) The individual received erroneous information regarding entitlement or eligibility to unemployment insurance benefits from an employee of the department.

(3) The individual has an unexpired railroad unemployment insurance claim with a remaining benefit balance which was filed prior to the unemployment insurance claim.

(4) The individual exercises the option to cancel a combined wage claim within the ten days allowed by federal regulation.

(5) The individual has previously filed a military claim in another state or territory. Wages erroneously assigned to Iowa must be deleted and an interstate claim must be filed.

(6) Federal wages have previously been assigned to another state or territory or are assignable to another state or territory under federal regulation. Federal wages erroneously assigned to Iowa must be deleted and the appropriate type of claim filed.

(7) The Iowa wages are erroneous and are deleted and the wages from one other state were used, the claim shall be canceled and the wages returned to the transferring state.

e. If a claim is canceled and becomes final with no appeal being filed, a valid claim with Iowa as the paying state shall not be reestablished with the same effective date.

f. Voiding a claim. If it is determined a claim has been filed under an incorrect social security number, the claim shall be voided rather than canceled.

g. All unemployment insurance claims canceled shall be clearly identified as such and the administrative record of the individual's file shall be destroyed three years after final action.

This rule is intended to implement Iowa Code sections 96.3(3), 96.3(4), 96.4(1), 96.4(3), 96.5(1) "h," 96.5(3), 96.6(1), 96.6(2), 96.15, 96.16, 96.19(4), 96.19(24), and 96.20.

[ARC 3116C, IAB 6/7/17, effective 7/12/17; ARC 3247C, IAB 8/2/17, effective 9/6/17; ARC 3248C, IAB 8/2/17, effective 9/6/17; ARC 3265C, IAB 8/16/17, effective 9/20/17; ARC 3303C, IAB 8/30/17, effective 10/4/17; ARC 3401C, IAB 10/11/17, effective 11/15/17; ARC 3648C, IAB 2/14/18, effective 3/21/18; ARC 3811C, IAB 5/23/18, effective 6/27/18; ARC 3812C, IAB 5/23/18, effective 6/27/18; ARC 3813C, IAB 5/23/18, effective 6/27/18]

871—24.3(96) Social security number needed for filing.

24.3(1) The correct social security number must be provided by the claimant. The correct social security number is essential in the processing of the claim. A claim cannot be processed without a social security number.

24.3(2) The claim will not become valid until the identity has been verified by the department. If the claimant has not provided the information to verify identity within seven calendar days of filing of a

claim, the claim will be voided. The claimant must submit another claim for benefits. The effective date of the claim would be the Sunday of the week the identity was verified.
[ARC 3303C, IAB 8/30/17, effective 10/4/17; ARC 3647C, IAB 2/14/18, effective 3/21/18]

871—24.4(96) Benefit rights information.

24.4(1) *Intrastate benefits.* Benefit rights information is provided to each individual filing an initial claim for benefits to explain those provisions in the law and rules which govern the individual's monetary eligibility, rights and responsibilities under Iowa's unemployment insurance program. The benefit rights information may be given by an individual or group type interview or by telephone or electronically. A Form 70-6200, Facts About Unemployment Insurance, will be provided which explains the individual's rights, benefits, and responsibilities under Iowa's unemployment insurance program.

24.4(2) *Interstate benefits.* Benefit rights information is not required for each individual who files an initial claim for interstate benefits. Claimants will be advised to contact the liable state which will provide additional information explaining the individual's rights, benefits, and responsibilities under the liable state's unemployment insurance program.

24.4(3) *Federal benefits.* Rescinded IAB 8/6/03, effective 9/10/03.

871—24.5(96) Mass separation—definition and procedure.

24.5(1) *Mass separation.* A mass separation is a layoff of all or a large number of workers, either permanently, indefinitely, or for a specific duration by one or more employers in the same area, at approximately the same time, and for the same common reason.

a. The special procedures for mass claim filing may be applied by the department, and the procedures may include taking claims at a designated site or utilizing an electronic mass claim entry form.

b. If other facilities must be obtained for a mass layoff, the order of precedence for obtaining such facilities will be as follows:

- (1) Interested employer involved.
- (2) Bona fide union which represents the workers.
- (3) Public facility (i.e., courthouse, city hall).

24.5(2) *Cooperation of employers.* To enable workforce development centers to make the preliminary arrangements for mass claim taking, the major employers in the area should notify the local office in advance, as soon as they know that a mass separation will take place. The workforce development center shall provide the information to legal counsel for the unemployment insurance services division so that the mass claim separation can be coordinated between the affected parties. This information should include:

- a.* The number of workers to be separated.
- b.* The date of separation and, if staggered, the number on each date.
- c.* Reason for layoff.
- d.* Its probable duration.
- e.* If recall is anticipated, the date it will begin and, if staggered, the number to be recalled on each date.
- f.* Rescinded IAB 8/6/03, effective 9/10/03.
- g.* Reserved.
- h.* If the layoff is for vacation or inventory purposes, the employer shall follow the vacation pay procedure in rules 871—24.16(96) and 871—24.17(96).

24.5(3) *Methods of mass claim taking.* The department may adopt a plan, which is based on the employer's workers, the circumstances and the size of the layoff.

24.5(4) *Announced mass separation.* If a mass separation occurs about which the department of workforce development has not been advised in advance in sufficient time to preschedule claimants, then the claimants will be advised of the alternative methods to file their claims as quickly as possible.

The department will develop a plan to provide service to the claimants as quickly as possible under the circumstances.

This rule is intended to implement Iowa Code section 96.6(1).
[ARC 3265C, IAB 8/16/17, effective 9/20/17]

871—24.6(96) Reemployment services and eligibility assessment procedure.

24.6(1) The department of workforce development will provide a program which consists of profiling claimants and providing reemployment services.

24.6(2) Purpose.

a. Profiling is a systematic procedure used to identify claimants who, because of certain characteristics, are determined to be permanently separated and most likely to exhaust benefits. Such claimants may be referred to reemployment services.

b. The eligibility assessment program is used to accelerate the individual's return to work and systematically review the individual's efforts towards the same goal.

24.6(3) Reemployment services and eligibility assessment may include, but are not limited to, the following:

- a.* An assessment of the claimant's aptitude, work history, and interest.
- b.* Employment counseling regarding reemployment approaches and plans.
- c.* Job search assistance and job placement services.
- d.* Labor market information.
- e.* Job search workshops or job clubs and referrals to employers.
- f.* Résumé preparation.
- g.* Other similar services.

24.6(4) As part of the initial intake procedure, each claimant shall be required to provide the information necessary for profiling and evaluation of the likelihood of needing reemployment assistance.

24.6(5) The referral of a claimant and the provision of reemployment services is subject to the availability of funding and limitations of the size of the classes.

24.6(6) A claimant shall participate in reemployment services when referred by the department unless the claimant establishes justifiable cause for failure to participate or the claimant has previously completed such training or services. Failure by the claimant to participate without justifiable cause shall disqualify the claimant from the receipt of benefits until the claimant participates in the reemployment services or eligibility assessment. The claimant shall contact the agency prior to the scheduled appointment or service to advise the department of the justifiable cause.

a. Justifiable cause for failure to participate is an important and significant reason which a reasonable person would consider adequate justification in view of the paramount importance of reemployment to the claimant. Justifiable cause includes when the claimant is scheduled for an employment interview, is verified return to work, or both prior to the scheduled appointment or service.

b. Reserved.

24.6(7) Eligibility assessment procedure.

a. Before an individual has claimed five weeks of intrastate benefits, the workforce development center shall receive a computer-selected list of individuals claiming benefits within the target population for review.

b. No eligibility assessment will be performed on an individual unless monetary eligibility and nonmonetary eligibility are established.

c. Once selected for an initial or subsequent eligibility assessment, claimants are required to participate in all components of the assessment as determined by the department.

d. A Notice to Report shall be sent by the workforce development center to an individual who is in an active status at the time of its printing. If the individual does not respond, the department must issue an appropriate failure to report decision and lock the claim to prevent payment.

e. Selected claimants must report in person to the designated workforce development center to receive staff-assisted services for the initial assessment.

f. Before an administrative law judge can rule on a disqualification for failure to report at an Iowa workforce development center as directed, there must be evidence to show that the individual was required to report for an interview.

24.6(8) Conducting the first eligibility assessment interview.

- a.* All available evidence must be examined to detect potentially disqualifying issues.
- b.* The individual's need for advice, assistance or instructions must be determined and conveyed to the individual.
- c.* The interview must convey to the individual the requirements that must be satisfied to maintain eligibility.
- d.* This advice, assistance or instruction constitutes an understanding and agreement between the individual and the unemployment insurance representative at the conclusion of the interview regarding the individual's willingness and ability to eliminate any barriers to obtaining reemployment which otherwise would result in referral for adjudication.
- e.* The individual shall be advised of what constitutes an acceptable effort to obtain reemployment in accordance with state policy, with consideration for local labor market information and the individual's occupation.

f. The final objective of the interview is to determine whether a subsequent interview is needed. This determination shall be based on expected return to work date, job openings in the area, local labor market conditions, and other relevant factors.

This rule is intended to implement Iowa Code section 96.4(7).
[ARC 3812C, IAB 5/23/18, effective 6/27/18]

871—24.7(96) Workers' compensation or indemnity insurance exclusion and substitution.

24.7(1) An individual who has received workers' compensation under Iowa Code chapter 85 during a healing period or temporary total disability benefits or indemnity insurance benefits for an extended period of time and has insufficient wage credits in the base period may qualify for unemployment insurance benefits. Under specific circumstances as described below, the department shall exclude certain quarters in the base period and substitute three or more consecutive calendar quarters immediately preceding the base period which were prior to the workers' compensation or indemnity insurance benefits.

24.7(2) An individual may receive workers' compensation during a healing period or temporary total disability benefits or indemnity insurance benefits until the individual returns to work or is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury.

24.7(3) The department shall make an initial determination of eligibility for unemployment insurance benefits. If the individual has no wage records or lacks qualifying wage requirements, the department shall substitute three or more calendar quarters of the base period with those three or more consecutive calendar quarters immediately preceding the base period in which the individual did not receive workers' compensation benefits or indemnity insurance benefits. The qualifying criteria for substituting quarters in the base period are that the individual:

- a.* Must have received workers' compensation benefits under Iowa Code chapter 85 or indemnity insurance benefits for which an employer is responsible during the excluded quarters, and
- b.* Did not receive wages from insured work for:
 - (1) Three or more calendar quarters in the base period, or
 - (2) Two calendar quarters and lacked qualifying wages from insured work during another quarter of the base period.

24.7(4) Subject to the provisions of subrule 24.7(3), the department shall use the following criteria for allowances and disqualifications.

- a.* *Allowances.* When the allowance criteria are met, the department shall always exclude and substitute at least three quarters of the base period if the individual received workers' compensation or indemnity insurance benefits in:

(1) Four base period quarters with no earnings in at least two of the quarters and the individual lacks qualifying earnings, the department will exclude and substitute all four quarters of the base period.

(2) Three no earnings base period quarters, with or without earnings in the fourth quarter, the fourth quarter remains in the base period and the department will exclude and substitute only three quarters in the base period.

b. Disqualifications. The request for retroactive substitution of base period quarters shall be denied if the individual received workers' compensation or indemnity insurance benefits in:

(1) At least three base period quarters but the individual is currently monetarily eligible with an established weekly and maximum benefit amount.

(2) At least three base period quarters and the individual has base period wages in three or more of the base period quarters, but the claim lacks qualifying earnings.

(3) Less than three base period quarters.

24.7(5) The individual shall be requested to complete the Affidavit and Questionnaire, Form 60-0286, which requests the following information:

a. Individual's name and social security number.

b. Name of employer responsible for the workers' compensation benefits or the indemnity insurance benefits.

c. Names of employers and periods worked for the period preceding the workers' compensation or the indemnity insurance pay period.

d. Name of the workers' compensation or indemnity insurance carrier or, if self-insured, the name of the employer.

e. Specify whether the wages determined to be in the individual's base period were or were not received for working in insured work during the base period.

24.7(6) The department will mail the redetermined initial claim to the individual. When the claim for benefits is determined to be monetarily eligible for payment, the employer responsible for the workers' compensation or the indemnity insurance benefits shall be notified of the redetermination and shall be responsible for the charges on the redetermined claim which are solely due to wage credits considered to be in the individual's base period due to the exclusion and substitution of calendar quarters. The employer responsible for the workers' compensation or indemnity insurance benefits shall have the right to protest as provided in rule 871—24.8(96).

[ARC 3248C, IAB 8/2/17, effective 9/6/17]

871—24.8(96) Notifying employing units of claims filed, requests for wage and separation information, and decisions made.

24.8(1) Issuance of a notice of the filing of an initial claim or a request for wage and separation information to employing units.

a. The Form 65-5317, Notice of Claim, and the Form 68-0221, Request for Wage and Separation Information, shall be:

(1) Addressed to the address or addresses as requested by the employing unit and agreed to by the department, to the business office of the employing unit where the records of the individual's employment are maintained, or to the employing unit's place of business where the individual claiming benefits was most recently employed; and

(2) Sent electronically via the United States Department of Labor State Information Data Exchange System (SIDES).

b. A notice of the filing of an initial claim or a request for wage and separation information shall be mailed to an owner, partner, executive officer, departmental manager or other responsible employee of the employing unit or to an agent designated to represent the employing unit in unemployment insurance matters.

(1) An agent who has been authorized to represent an employing unit in unemployment insurance matters may be furnished information from the files of the department to the extent designated in the authorization and in the same manner and to the same extent that the information would be furnished to the employing unit.

(2) The appointment of an agent to act for the employing unit and to receive documents and reports in no way abrogates the right of department representatives to deal directly with the employing unit when it appears that this will best serve the interest of the parties.

24.8(2) Responding by employing units to a notice of the filing of an initial claim or a request for wage and separation information and protesting the payment of benefits.

a. The employing unit which receives a Form 65-5317, Notice of Claim, or a Form 68-0221, Request for Wage and Separation Information, must, within ten days of the date of the notice or request, submit to the department wage or separation information that affects the individual's rights to benefits, including any facts which disclose that the individual separated from employment voluntarily and without good cause attributable to the employer or was discharged for misconduct in connection with employment.

b. The employing unit may protest the payment of benefits if the protest is postmarked within ten days of the date of the notice of the filing of an initial claim. In the event that the tenth day falls on a Saturday, Sunday or holiday, the protest period is extended to the next working day of the department. If the employing unit has filed a timely report of facts that might adversely affect the individual's benefit rights, the report shall be considered as a protest to the payment of benefits.

c. If the employing unit protests that the individual was not an employee and it is subsequently determined that the individual's name was changed, the employing unit shall be deemed to have not been properly notified and the employing unit shall again be provided the opportunity to respond to the notice of the filing of the initial claim.

d. The employing unit has the option of notifying the department under conditions which, in the opinion of the employing unit, may disqualify an individual from receiving benefits. The notification may be submitted electronically.

(1) The Notice of Separation, Form 60-0154, must be postmarked or received before or within ten days of the date that the Notice of Claim, Form 65-5317, was mailed to the employer. In the event that the tenth day falls on Saturday, Sunday or holiday, the protest period is extended to the next working day of the department. If a claim for unemployment insurance benefits has not been filed, the Notice of Separation may be accepted at any time.

(2) Rescinded IAB 2/10/99, effective 3/17/99.

24.8(3) Completing and signing of forms by an employing unit which may affect the benefit rights of an individual.

a. A notice of separation, and any response by an employing unit or its authorized agent to a notice of the filing of an initial claim or a request for wage and separation information, shall be accomplished by properly completing the form or computerized format provided by the department.

b. A notice of separation, and any paper response by an employing unit or its authorized agent to a notice of the filing of an initial claim or a request for wage and separation information, shall be executed by the employing unit on the form provided by the department under the signature of an individual proprietor, a partner, an executive officer, a department manager or other responsible employee who handles employee information, or who has direct knowledge of the reasons for the individual's separation from employment or by completing the computerized form designated by the department.

c. Rescinded IAB 8/2/17, effective 9/6/17.

d. Failure by an employing unit or its authorized agent to timely submit any notice or response requested by the department shall result in the department representative's making a determination of the individual's rights to benefits based on the information available.

24.8(4) Mailing of determinations, redeterminations and decisions to employing units.

a. An employing unit which has filed a timely response or protest to the notice of the filing of an initial claim shall be notified in writing of the determination as to the individual's rights to benefits. If an employing unit of the individual has submitted timely information affecting the individual's rights to benefits, including facts which disclose that the individual voluntarily quit without good cause attributable to the employing unit or was discharged for misconduct in connection with employment, the employing unit shall be notified in writing of the department's decision as to the cause of termination of the individual's employment.

b. Any notice of determination or decision shall contain a statement setting forth the employing unit's right of appeal.

c. Determinations as to an individual's right to benefits, decisions as to the cause of termination of the individual's employment, decisions as to an employing unit's experience record and correspondence related thereto shall be sent to:

(1) The address of the employing unit to which the notice of the filing of an initial claim was mailed; or

(2) The address requested by the employing unit on the document filed with the department in response or protest to the notice of the filing of an initial claim;

(3) If the employing unit in its response or protest to the notice of the filing of an initial claim furnishes the address of an agent for the employing unit and requests that further documents and correspondence be sent to the agent, the department representative shall comply, provided there is on file with the department an approved authorization (power of attorney) designating the agent to represent the employing unit.

[ARC 3247C, IAB 8/2/17, effective 9/6/17]

871—24.9(96) Determination of benefit rights.

24.9(1) Monetary determinations.

a. When an initial claim for benefits is filed, the department shall send to the individual claiming benefits a notification consisting of a statement of the individual's weekly benefit amount, total benefits, base period wages, and other data pertinent to the individual's benefit rights.

b. The monetary record shall constitute a final decision unless newly discovered facts which affect the validity of the original determination or a written request for reconsideration is filed by the individual within ten days of the date of the mailing of the monetary record specifying the grounds of objection to the monetary record.

c. If newly discovered facts are obtained by the department or a written request for reconsideration is filed by the individual and is timely, an unemployment insurance representative shall examine the facts or the written request for reconsideration and shall promptly issue a redetermination or transfer the written request to an administrative law judge. The redetermination of the monetary record shall constitute a final decision unless a written appeal to an administrative law judge is filed by the individual within ten days of the date of the mailing of the redetermination specifying the grounds of objection to the redetermined monetary record. For the purposes of this paragraph, if the newly discovered facts obtained by the department would result in a change of the individual's maximum benefit amount of \$25 or less, the department representative is not required to issue a redetermination unless a redetermination is requested by the individual, the employer, or a representative of another state or federal agency responsible for the administration of an unemployment insurance law.

d. For the purposes of this subrule, the appeal period is extended to the next working day of the department in the event that the tenth day falls on a Saturday, Sunday, or holiday. Also, failure of an individual to properly complete and sign any document relating to the adjudication of a claim shall result in the return of the document to the individual for proper completion or signature; however, an extension of the appeal period to allow for the return of the documents shall not be granted.

24.9(2) Nonmonetary determinations.

a. When a protest of an initial claim for benefits is filed, the department shall mail to the individual claiming benefits, and the most recent or any other base period employing unit, Form 65-5323, Unemployment Insurance Decision, which affects the individual's right to benefits.

b. When an issue could result in a decision detrimental to an interested party, the interested party shall be afforded the opportunity to present facts and evidence which may include an informational fact-finding interview scheduled by the department. An interested party, at the party's expense and with the party's equipment, may record (video or audio) the proceedings. All participants must be informed of the recording of the interview. The recording of the interview must not be disruptive or distracting in nature.

c. Each of these decisions of the unemployment insurance representative shall constitute a final decision unless there are newly discovered facts which affect the validity of the original decision or a written request for reconsideration is filed by the individual, or the most recent or any other base period employing unit, within ten days of the date of the mailing of the decision specifying the grounds of objection to the decision.

d. If newly discovered facts are obtained by the department or a written request for reconsideration is timely filed by the individual, or the most recent or any other base period employing unit, an unemployment insurance representative shall examine the newly discovered facts or the written request for reconsideration and shall promptly issue a redetermination or transfer the written request to an administrative law judge. The redetermination of the decision shall constitute a final decision unless a written appeal to an administrative law judge is filed by the individual, or the most recent or any other base period employing unit, within ten days of the date of the mailing of the redetermination specifying the grounds for objection to the redetermined decision.

e. For the purposes of this subrule, the protest period is extended to the next working day of the department in the event that the tenth day falls on a Saturday, Sunday or holiday. Also, failure by an individual or an employing unit to properly complete or sign any document relating to the adjudication of a claim shall result in the return of the document to the individual or employing unit for proper completion or signature; however, an extension of the protest period to allow for the return of the document shall not be granted.

[ARC 3247C, IAB 8/2/17, effective 9/6/17; ARC 3265C, IAB 8/16/17, effective 9/20/17; ARC 3813C, IAB 5/23/18, effective 6/27/18]

871—24.10(96) Employer and employer representative participation in fact-finding interviews.

24.10(1) “Participate,” as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if un rebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer’s representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer’s representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

24.10(2) “A continuous pattern of nonparticipation in the initial determination to award benefits,” pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer’s representative in writing after each such appeal.

24.10(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension

by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

24.10(4) “Fraud or willful misrepresentation by the individual,” as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7) “b” as amended by 2008 Iowa Acts, Senate File 2160.

871—24.11(96) Eligibility review program. Rescinded **ARC 3812C**, IAB 5/23/18, effective 6/27/18.

871—24.12 Reserved.

871—24.13(96) Deductible and nondeductible payments.

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, 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, and the unemployment insurance representative cannot otherwise determine the period, the unemployment insurance representative shall determine the week or weeks 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). 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.

24.13(2) Deductible payments from benefits. The following payments are considered as wages and are deductible from benefits on the basis of the formula used to compute an individual’s weekly benefit payment as provided in rule 871—24.18(96):

a. Holiday pay. However, if the actual entitlement to the holiday pay is subsequently not paid by the employer, the individual may request an underpayment adjustment from the department.

b. Commissions. However, the commission payment is only deductible when based on service performed by the individual during the period in which the individual is also claiming benefits.

c. Incentive pay. However, the incentive payment is only deductible when based on service performed by the individual during the period in which the individual is also claiming benefits.

d. Strike pay. However, the strike pay is only deductible when it is a payment received for services rendered and the individual is otherwise eligible for benefits.

e. Remuneration other than cash. The cash value of all remuneration payable in any medium other than cash, board, rent, housing, lodging, meals, or similar advantage, is only deductible when based on service performed by the individual during the period in which the individual is also claiming benefits.

f. Stand-by pay. When an individual is paid to hold oneself in readiness for a call to specific work for an employer but is not called, since the work is given to another, the payment is stand-by pay which is deductible from benefits when earned by the individual during the period when the individual is claiming benefits.

g. Tips or gratuity. However, the amount of the tips or gratuity is only deductible when based on service performed by the individual during the period in which the individual is also claiming benefits.

24.13(3) Fully deductible payments from benefits. The following payments are considered as wages; however, such payments are fully deductible from benefits on a dollar-for-dollar basis:

a. Wage interruption insurance payment. Any insurance payment received or due from wage interruption insurance because of fire, disaster, etc.

b. Excused personal leave. Excused personal leave, also referred to as casual pay or random pay, is personal leave with pay granted to an employee for absence from the job because of personal reasons. It shall be treated as vacation and be fully deductible in the manner prescribed in rule 871—24.16(96).

c. Wages in lieu of notice, separation allowance, severance pay and dismissal pay.

d. Workers' compensation, temporary disability only. The payment shall be fully deductible with respect to the week in which the individual is entitled to the workers' compensation for temporary disability, and not to the week in which such payment is paid.

e. Pension, retirement, annuity, or any other similar periodic payment made under a plan maintained and contributed to by a base period or chargeable employer. An individual's weekly benefit amount shall only be reduced by that portion of the payment which is the same percentage as the percentage contribution of the base period or chargeable employer to the plan.

24.13(4) Nondeductible payments from benefits. The following payments are not considered as wages and are not deductible from benefits:

a. Self-employment income. However, the individual must meet the benefit eligibility requirements of Iowa Code section 96.4(3).

b. Bonuses. The bonus payment is only nondeductible when based on service performed by the individual before the period in which the individual is also claiming benefits.

c. Remuneration for work performed by the individual claiming benefits in exchange for county relief in the form of groceries, rent, etc.

d. Payment for unused sick leave.

e. National guard duty pay. This includes reserve unit drill pay for any branch of the armed service.

f. Supplemental unemployment benefit plans approved by the department. See 871—subrule 23.3(1), paragraph "e," for criteria and employer procedure for obtaining department approval.

g. Pension to the blind.

h. Payment for terminal leave. Any payment received by military personnel for unused leave upon discharge.

i. Compensation for military service-connected disability from the Department of Veterans Affairs.

j. Payments to the surviving spouse of a regular or disability pension based on the work of the deceased spouse.

k. Deferred wage compensation. Remuneration received by the individual for wages earned in a period prior to the individual's claim for benefits shall not be deductible during the period in which the individual is claiming benefits.

l. Witness and jury fees. These fees are reimbursement for expenses and are not considered as wages.

m. Supplemental security income. This payment is nondeductible because it is financed by income taxes and not social security taxes and is based on need factors such as age, mental or physical disability, and personal income, and not on previous employment.

n. Federal social security benefit and social security disability payments.

o. Payments conditional upon the release of any rights.

p. Payments requiring the individual to work through a specific day to be eligible.

This rule is intended to implement Iowa Code sections 96.3(3), 96.5, 96.5(5), 96.11(1), and 96.19(38).

[ARC 1367C, IAB 3/5/14, effective 4/9/14; ARC 3303C, IAB 8/30/17, effective 10/4/17]

871—24.14 and 24.15 Reserved.

871—24.16(96) Vacation pay.

24.16(1) If the employer properly notifies the department within ten days after the notification of the filing of the claim that an amount of vacation pay, either paid or owed, is to be applied to a specific vacation period, a sum equal to the wages of the individual for a normal workday shall be applied to the first and each subsequent workday of the designated vacation period until the amount of the vacation pay is exhausted. For the purposes of this rule, rule 871—24.13(96), and rule 871—24.17(96), the term “vacation pay” shall include paid time off and annual leave payments.

24.16(2) If the employer makes the original designation of the vacation period in a timely manner, the employer may extend the vacation period by designating the period of the extension in writing to the department before the period of extension begins.

24.16(3) If the employer fails to properly notify the department within ten days after the notification of the filing of the claim that an amount of vacation pay, either paid or owed, is to be applied to a specific vacation period, the entire amount of the vacation pay shall be applied to the one-week period starting on the first workday following the last day worked as defined in subrule 24.16(4). However, if the individual does not claim benefits after layoff during the normal employer workweek immediately following the last day worked, then the entire amount of the vacation pay shall not be deducted from any week of benefits.

24.16(4) Unless otherwise specified by the employer, the amount of the vacation pay shall be converted by the department to eight hours for a normal workday and five workdays for a normal workweek.

This rule is intended to implement Iowa Code section 96.5(7).
[ARC 1367C, IAB 3/5/14, effective 4/9/14]

871—24.17(96) Vacation pay procedure.

24.17(1) Employer notice specified vacation or holiday pay only. The Form 65-5317, Notice of Claim, the Form 62-2048, Request for Federal Wage and Separation Information, and the Form 62-2049, Request for Wage and Separation Information on Federal Employment Additional Claim, which are returned by the employer for the purpose of notification of vacation pay, shall be used as notification to the department that vacation pay is applicable. The Forms 65-5317, 62-2048, and 62-2049 received in the administrative office shall be routed to the appropriate office for the following action:

a. Upon receipt of the vacation information, the unemployment insurance representative shall compare the amount of vacation reported by the employer with the computer record. If the computer record shows any discrepancies with the vacation information provided by the employer that would affect the claimant’s eligibility for unemployment insurance benefits for any week claimed, the claimant shall be afforded the opportunity to present facts and evidence, which may include an informational fact-finding interview scheduled by the department. The unemployment insurance representative may afford the employer the opportunity to present additional facts and evidence after ascertaining such from the claimant. If the employer is afforded such an opportunity to provide additional facts and evidence, the unemployment insurance representative shall also afford the claimant the opportunity to present additional facts and evidence.

b. After affording the claimant an opportunity to present facts and evidence regarding the receipt of vacation pay, and potentially affording the employer and the claimant an opportunity to provide additional facts and evidence, the representative shall consider all information submitted by the interested parties and issue to the employer and the claimant the appropriate decision concerning the vacation pay. The unemployment insurance representative shall then check the current status of the claim on the computer record to ascertain if any weeks have been reported.

c. If the computer record shows that the claimant has not reported or claimed for some or all of the weeks indicated for the vacation period, the unemployment insurance representative shall take no further action on the weeks not claimed.

d. The claimant shall be instructed to only report vacation pay applicable to the first week. The claimant shall also be instructed that vacation pay designated by the employer in excess of one week may result in an overpayment of benefits.

24.17(2) Reserved.

This rule is intended to implement Iowa Code section 96.5(7).
[ARC 3116C, IAB 6/7/17, effective 7/12/17]

871—24.18(96) Wage-earnings limitation. An individual who is partially unemployed may earn weekly a sum equal to the individual's weekly benefit amount plus \$15 before being disqualified for excessive earnings. If such individual earns less than the individual's weekly benefit amount plus \$15, the formula for wage deduction shall be a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with respect to that week and rounded to the nearest dollar, in excess of one-fourth of the individual's weekly benefit amount.

This rule is intended to implement Iowa Code sections 96.3, 96.4 and 96.19(38).

871—24.19(96) Determination and review of benefit rights.

24.19(1) Claims for benefits shall be promptly determined by the department on the basis of such facts as it may obtain. Notice of such determination shall be promptly given to each claimant and to any employer whose employment relationship with the claimant, or the claimant's separation therefrom, involves actual or potential disqualifying issues relevant to the determination. Such notice to the claimant shall advise of the weekly benefit amount, duration of benefits, wage records, other data pertinent to benefit rights, and if disqualified, the time of and reason for such disqualification. If a claimant is ineligible, such claimant shall be advised of such ineligibility and the reason therefor. Each notice of benefit determination which the department is required to furnish to the claimant shall, in addition to stating the decision and its reasons, include a notice specifying the claimant's appeal rights. The notice of appeal rights shall state clearly the place and manner for taking an appeal from the determination and the period within which an appeal may be taken. Unless the claimant or any such other party entitled to notice, within ten days after such notification was mailed to such claimant's last-known address, files with the department a written request for a review of or an appeal from such determination, such determination shall be final.

24.19(2) Each interested party will be afforded the opportunity to have a fact-finding interview by telephone regarding matters which are scheduled for a hearing. 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.

24.19(3) Upon receiving a written request for review or, on its own initiative and on the basis of the facts as it may have in its possession or may acquire, the benefits bureau may affirm, modify, or reverse the prior decision, or refer the claim to an administrative law judge. The claimant or any other party filing the request for review shall be promptly notified of the decision or referral. Unless the claimant or any other party files an appeal within ten days after the date of mailing, the latter decision shall be final and benefits shall be paid or denied in accordance therewith.

[ARC 3116C, IAB 6/7/17, effective 7/12/17; ARC 3265C, IAB 8/16/17, effective 9/20/17]

871—24.20 and 24.21 Reserved.

871—24.22(96) Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

24.22(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the

work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

24.22(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

a. Shift restriction. The individual does not have to be available for a particular shift. If an individual is available for work on the same basis on which the individual's wage credits were earned and if after considering the restrictions as to hours of work, etc., imposed by the individual there exists a reasonable expectation of securing employment, then the individual meets the requirement of being available for work.

b. Job test. The best method of testing availability for work is an offer of work or job test. If a job test is not possible because of lack of a suitable offer, the active search for work is relied on and conclusions are likely to be based entirely on the fact that the individual did or did not make a search, without regard to the fact that the individual's personal efforts had little probability of success.

c. Intermittent employment. An individual cannot restrict employability to only temporary or intermittent work until recalled by a regular employer.

d. Jury duty. The individual is considered available for work while serving on jury duty because time spent in jury service is not a personal service performed under a contract of hire in an employment situation but is a public duty required by law. Jury duty does not render the individual as employed and ineligible for benefits even though it may involve the individual full-time. Witness and jury fees will be considered as reimbursement for expenses and not as wages.

e. Company employment office. The department is not bound by a union/company contract that requires the individual to report at the company employment office. The individual is an independent agent seeking work, and may be found available, if an otherwise diligent search of work is made.

f. Part-time worker, student—other. Part-time worker shall mean any individual who has been in the employ of an employing unit and has established a pattern of part-time regular employment which is subject to the employment security tax, and has accrued wage credits while working in a part-time job. If such part-time worker becomes separated from this employment for no disqualifiable reason, and providing such worker has reasonable expectation of securing other employment for the same number of hours worked, no disqualification shall be imposed under Iowa Code section 96.4(3). In other words, if an individual is available to the same degree and to the same extent as when the wage credits were accrued, the individual meets the eligibility requirements of the law.

g. Work release program while incarcerated. For those individuals incarcerated in jail, the work release program usually does not meet the availability requirements of Iowa Code section 96.4(3); but the department will review any situation concerning an individual incarcerated in a jail, who can meet the able to work, availability for work, and actively seeking work requirements of Iowa Code section 96.4(3).

h. Available for part of week. Each case must be decided on its own merits. Generally, if the individual is available for the major portion of the workweek, the individual is considered to be available for work.

i. On-call workers.

(1) Substitute workers (i.e., post office clerks, railroad extra board workers), who hold themselves available for one employer and who do not accept other work, are not available for work within the meaning of the law and are not eligible for benefits.

(2) Substitute teachers. The question of eligibility of substitute teachers is subjective in nature and must be determined on an individual case basis. The substitute teacher is considered an instructional employee and is subject to the same limitations as other instructional employees. As far as payment of benefits between contracts or terms and during customary and established periods of holiday recesses is concerned, benefits are denied if the substitute teacher has a contract or reasonable assurance that the substitute teacher will perform service in the period immediately following the vacation or holiday recess. An on-call worker (includes a substitute teacher) is not disqualified if the individual is able and available for work, making an earnest and active search for work each week, placing no restrictions on employment and is genuinely attached to the labor market.

(3) An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits by performing on-call work, such as a banquet worker, railway worker, substitute school teacher or any other individual whose work is solely on-call work during the base period, is not considered an unemployed individual within the meaning of Iowa Code section 96.19(38) "a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

k. Effect of religious convictions on Sabbath day work. An individual is considered as available for work if the precepts of the individual's religion prohibit work on the Sabbath. An individual who refuses to work on the Sabbath designated by the individual's religion, because of conscientious observance of the Sabbath as a matter of religious conviction, is also deemed to have good cause for refusing the work.

l. Available for work. To be considered available for work, an individual must at all times be in a position to accept suitable employment during periods when the work is normally performed. As an individual's length of unemployment increases and the individual has been unable to find work in the individual's customary occupation, the individual may be required to seek work in some other occupation in which job openings exist, or if that does not seem likely to result in employment, the individual may be required to accept counseling for possible retraining or a change in occupation.

m. Restrictions and reasonable expectation of securing employment. An individual may not be eligible for benefits if the individual has imposed restrictions which leave the individual no reasonable expectation of securing employment. Restrictions may relate to type of work, hours, wages, location of work, etc., or may be physical restrictions.

n. Corporate officers. To be considered available, the corporate officer must meet the same tests of availability as are met by other individuals. The individual must be desirous of other work, be free from serious limitations and be seriously searching for work.

o. Lawfully authorized work. An individual who is not lawfully authorized to work within the United States will be considered not available for work.

24.22(3) Earnestly and actively seeking work. Mere registration at a workforce development center does not establish that the individual is earnestly and actively seeking work. It is essential that the individual personally and diligently search for work. It is difficult to establish definite criteria for defining the words earnestly and actively. Much depends on the estimate of the employment opportunities in the area. The number of employer contacts which might be appropriate in an area of limited opportunity might be totally unacceptable in other areas. When employment opportunities are high an individual may

be expected to make more than the usual number of contacts. Unreasonable limitations by an individual as to salary, hours or conditions of work can indicate that the individual is not earnestly seeking work. The department expects each individual claiming benefits to conduct themselves as would any normal, prudent individual who is out of work.

a. Basic requirements. An individual shall be ineligible for benefits for any period for which the department finds that the individual has failed to make an earnest and active search for work. The circumstances in each case are considered in determining whether an earnest and active search for work has been made. Subject to the foregoing, applicable actions of the following kind are considered an earnest and active search for work if found by the department to constitute a reasonable means of securing work by the individual, under the facts and circumstances of the individual's particular situation:

(1) Making application with employers as may reasonably be expected to have openings suitable to the individual.

(2) Registering with a placement facility of a school, college, or university if one is available in the individual's occupation or profession.

(3) Making application or taking examination for openings in the civil service of a governmental entity with reasonable prospects of suitable work for the individual.

(4) Responding to appropriate "want ads" for work which appears suitable to the individual if the response is made in writing or in person or electronically.

(5) Any other action which the department finds to constitute an effective means of securing work suitable to the individual.

(6) No individual, however, is denied benefits solely on the ground that the individual has failed or refused to register with a private employment agency or at any other placement facility which charges the job-seeker a fee for its services. However, an individual may count as one of the work contacts required for the week an in-person contact with a private employment agency.

(7) An individual is considered to have failed to make an effort to secure work if the department finds that the individual has followed a course of action designed to discourage prospective employers from hiring the individual in suitable work.

b. Number of employer contacts. It is difficult to determine criteria in which earnestly and actively may be interpreted. Much depends on the estimate of employment opportunities in the area. The number of employer contacts which might be appropriate in an area of limited opportunities might be totally unacceptable in another area of unlimited opportunities. The number of contacts that an individual must make is dependent upon the condition of the local labor market, the duration of benefit payments, a change in the individual's characteristics, job prospects in the community, and other factors as the department deems necessary.

c. Union and professional employees. Members of unions or professional organizations who normally obtain their employment through union or professional organizations are considered as earnestly and actively seeking work if they maintain active contact with the union's business agent or with the placement officer in the professional organization. A paid-up membership must be maintained if this is a requirement for placement service. The trade, profession or union to which the individual belongs must have an active hiring hall or placement facility, and the trade, profession or union must be the source customarily used by employers in filling their job openings. Registering with the individual's union hiring or placement facility is sufficient except that whenever all benefit rights to regular benefits are exhausted and Iowa is in an extended benefit period or similar program such as the federal supplemental compensation program, individuals must also actively search for work; mere registration at a union or reporting to union hiring hall or registration with a placement facility of the individual's professional organization does not satisfy the extended benefit systematic and sustained effort to find work, and additional work contacts must be made.

d. Week-to-week disqualification. Active search for work disqualifications are to be made on a week-to-week basis and are not open-end disqualifications.

e. Seniority rights. An individual who fails to exercise seniority rights to replace another employee with less seniority has the work search requirement waived during a period of regular benefits. This

waiver does not apply to the individual who is receiving extended benefits or similar federal program benefits.

f. Search for work.

(1) The Iowa law specifies that an individual must earnestly and actively seek work. This is interpreted to mean that a registration for work at a workforce development center or state employment service office in itself does not meet the requirements of the law. Nor is it interpreted to mean that every individual must make a fixed number of employer contacts each week to establish eligibility. The number of contacts that an individual must make is dependent upon the condition of the local labor market, the duration of benefit payments, a change in claimant characteristics, job prospects in the community, and such other factors as the department deems relevant.

(2) The individual is referred to suitable work, when possible, to those employers who have outstanding requests with the department of workforce development for referrals. The individual must meet the minimum lawful requirements of the employer. The individual applies to and obtains the signatures of the employer so designated on the form provided, unless the employer refuses to sign the form. The individual must return the form to the department as directed. The individual's failure to obtain the signature of designated employers, who have not refused to sign the form, disqualifies the individual from future benefits until requalified by earning ten times the weekly benefit amount.

(3) The group assignment of individuals is used, to a certain extent, in determining which ones are required to make personal applications for work. Other factors, however, such as the condition of the local labor market, the duration of benefit payments, and a change in claimant characteristics, are also taken into consideration on a weekly basis.

(4) Individuals receiving partial benefits are exempt from making personal applications for work, in any week they have worked and received wages from their regular employer. Individuals involved in hiring hall practices must keep in weekly touch with the business agent of that union in which they maintain membership. All other individuals must make contacts with such frequency as the department considers advisable, after considering job prospects in the community, the condition of the labor market and any other factors which may have a bearing on the individual's reemployment. A sincere effort must be made to find a job. A contact made merely for the sake of complying with the law is not good enough.

g. Reverse referral. A reverse referral is defined as an employer hiring only through the department of workforce development and all individuals applying for employment with the employer are referred to the department. An individual may use the department as work contacts during a week with the employer's name and the workforce development employee's name listed as the individual contacted. The workforce development center must be contacted in person by the individual to utilize each reverse referral registration job contact.

h. Job search assistance. Job search assistance classes, including reemployment services, which are sponsored by the department of workforce development and attended by the individual during a week may be counted as one of the individual's work search contacts for that week.

This rule is intended to implement Iowa Code section 96.4(3).

[ARC 8711B, IAB 5/5/10, effective 6/9/10; ARC 3812C, IAB 5/23/18, effective 6/27/18]

871—24.23(96) Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

24.23(1) An individual who is ill and presently not able to perform work due to illness.

24.23(2) An individual presently in the hospital is deemed not to meet the availability requirements of Iowa Code section 96.4(3) and benefits will be denied until a change in status and the individual can meet the eligibility requirements. Such individual must renew the claim at once if unemployed.

24.23(3) If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual has no reasonable expectancy of securing work, such individual will be deemed not to have met the availability requirements of Iowa Code section 96.4(3).

24.23(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the

availability requirements of the law. However, an individual shall not be disqualified for restricting employability to the area of usual employment. See subrule 24.24(7).

24.23(5) Full-time students devoting the major portion of their time and efforts to their studies are deemed to have no reasonable expectancy of securing employment except if the students are available to the same degree and to the same extent as they accrued wage credits they will meet the eligibility requirements of the law.

24.23(6) If an individual has a medical report on file submitted by a physician, stating such individual is not presently able to work.

24.23(7) Where an individual devotes time and effort to becoming self-employed.

24.23(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care.

24.23(9) Reserved.

24.23(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

24.23(11) Failure to report as directed to workforce development in response to the notice which was mailed to the claimant will result in the claimant being deemed not to meet the availability requirements.

24.23(12) If a claimant is in jail or prison, such claimant is not available for work.

24.23(13) Rescinded IAB 8/6/03, effective 9/10/03.

24.23(14) An individual is deemed not available for work because such individual cannot be contacted by the department for referral to possible employment.

24.23(15) Where a claimant has demanded a wage in excess of the wages most commonly paid in such claimant's locality for the suitable work the individual is seeking.

24.23(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

24.23(17) Work is unduly limited because the claimant is not willing to work the number of hours required to work in the claimant's occupation.

24.23(18) Where the claimant's availability for work is unduly limited because such claimant is willing to work only in a specific area although suitable work is available in other areas where the claimant is expected to be available for work.

24.23(19) Availability for work is unduly limited because the claimant is not willing to accept work in such claimant's usual occupation and has failed to establish what other types of work that can and will be performed at the wages most commonly paid in the claimant's locality.

24.23(20) Where availability for work is unduly limited because the claimant is waiting to be recalled to work by a former employer or waiting to go to work for a specific employer and will not consider suitable work with other employers.

24.23(21) Rescinded IAB 8/6/03, effective 9/10/03.

24.23(22) Where a claimant does not want to earn enough wages during the year to adversely affect receipt of federal old-age benefits (social security).

24.23(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

24.23(24) Rescinded IAB 8/2/17, effective 9/6/17.

24.23(25) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

24.23(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

24.23(27) Failure to report on a claim that a claimant made any effort to find employment will make a claimant ineligible for benefits during the period. Mere registration at the workforce development center does not establish that a claimant is able and available for suitable work. It is essential that such claimant must actively and earnestly seek work.

24.23(28) A claimant will be ineligible for benefits because of failure to make an adequate work search after having been previously warned and instructed to expand the search for work effort.

24.23(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

24.23(30) Failure to attend the major portion of the scheduled workweek for department approved training.

24.23(31) Where the claimant spent the major portion of the period traveling while relocating.

24.23(32) The claimant is ineligible for benefits because no search for work was made during the period such claimant was on vacation unless the provisions of Iowa Code section 96.19(38) "c" are met.

24.23(33) Where the claimant left employment prior to a scheduled date of layoff when such claimant could have remained in employment during this period. No disqualification may be imposed in accordance with Iowa Code section 96.5(1) "g" for the period subsequent to the date of the scheduled layoff if such claimant is otherwise eligible. The claimant will be disqualified for the period between the last day worked and the date of the scheduled layoff because of voluntary unemployment.

24.23(34) Where the claimant is not able to work due to personal injury.

24.23(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

24.23(36) Rescinded IAB 8/6/03, effective 9/10/03.

24.23(37) An individual shall be deemed to have failed to make an effort to secure work if the individual has followed a course of action designed to discourage prospective employers from hiring such individual in suitable work.

24.23(38) Rescinded IAB 8/6/03, effective 9/10/03.

24.23(39) Where the work search has been deliberately falsified for the purpose of obtaining unemployment insurance benefits. The general guide for disqualifications for falsification of work search is listed below. It is intended to be used as a guide only and is not a substitute for the personal subjective judgment of the representative because each case must be decided on its own merits. The administrative penalty recommended for falsification is:

a. First offense—six weeks' penalty.

b. Second offense—nine weeks' penalty.

c. Third offense—total disqualification for the remainder of the benefit year plus consideration of the possibility of filing fraud charges depending on the circumstances.

24.23(40) Reserved.

24.23(41) The claimant became temporarily unemployed, but was not available for work with the employer that temporarily laid the claimant off. The evidence must establish that the claimant had a choice to work, and that the willingness to work would have led to actual employment in suitable work during the weeks the employer temporarily suspended operations.

This rule is intended to implement Public Law 96-499, Iowa Code sections 96.4(3), 96.5(1), 96.6(1), 96.19(38) "c" and 96.29.

[ARC 3247C, IAB 8/2/17, effective 9/6/17; ARC 3812C, IAB 5/23/18, effective 6/27/18]

871—24.24(96) Failure to accept work and failure to apply for suitable work. Failure to accept work and failure to apply for suitable work shall be removed when the individual shall have worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

24.24(1) Bona fide offer of work.

a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

b. Upon notification of a job opening for a claimant, a representative of the department shall notify the claimant of the job referral. If the claimant fails to respond without good cause, the claimant

shall be disqualified until such time as the claimant contacts the local workforce development center or unemployment insurance service center.

24.24(2) *Job within claimant's capabilities.*

a. The job offered must be within the claimant's physical capabilities and not require any undue physical skill or particular training which the claimant does not already possess. As the period of unemployment lengthens, work which might originally have been unsuitable may become suitable.

b. If the claimant, separated for lack of work, fails to accept work offered by the employer on recall or fails to apply for work when directed by a representative of the department, such failure shall constitute a refusal of suitable work. In such a situation said claimant shall be disqualified for failure to apply for or accept an offer to work until such time as the individual shall have worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

24.24(3) *Each case decided on its own merits.* Based upon the facts found by the department through investigation it shall then be determined whether the work was suitable and whether the claimant has good cause for refusal. Each case shall be determined on its own merits as established by the facts. A reason constituting good cause for refusal of suitable work may nevertheless disqualify such claimant as being not available for work.

24.24(4) *Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3).* Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

24.24(5) *Bumping rights to a job.* A claimant who fails to exercise seniority rights to bump a less senior employee is eligible for benefits and the provision pertaining to the search for work is waived during a period of regular unemployment insurance benefits. This waiver of the search for work does not apply to a claimant who is receiving extended benefits.

24.24(6) *Claimant physically unable to perform job.* A medical certification from a medical practitioner must be submitted to support the claimant's statement that work offered is not suitable because of the claimant's physical condition.

24.24(7) *Gainfully employed outside of area where job is offered.* Two reasons which generally would be good cause for not accepting an offer of work would be if the claimant were gainfully employed elsewhere or the claimant did not reside in the area where the job was offered.

24.24(8) *Refusal disqualification jurisdiction.* Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in subrule 24.1(21), before the Iowa Code subsection 96.5(3) disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

24.24(9) Reserved.

24.24(10) *Distance to new job.* Without a prior specific agreement between the employer and employee the employee's refusal to follow the employer to a distant new job site shall not be reason for a refusal disqualification.

24.24(11) *Bulletin board notice of work.* A bulletin board notice for employees to work during a plant shutdown shall not constitute an offer of work by the company. Such offer of work must be by personal contact to the employee.

24.24(12) *Claimant discourages prospective employers.* When a claimant willfully follows a course of action designed to discourage a prospective employer from hiring such claimant, the claimant shall be deemed to have refused suitable work as contemplated by the statute.

24.24(13) *Claimant moved to another state.* A claimant who moves to another state shall not be subject to disqualification for refusal to return to a previously held job.

24.24(14) *Employment offer from former employer.*

a. The claimant shall be disqualified for a refusal of work with a former employer if the work offered is reasonably suitable and comparable and is within the purview of the usual occupation of the claimant. The provisions of Iowa Code section 96.5(3) “*b*” are controlling in the determination of suitability of work.

b. The employment offer shall not be considered suitable if the claimant had previously quit the former employer and the conditions which caused the claimant to quit are still in existence.

24.24(15) *Suitable work.* In determining what constitutes suitable work, the department shall consider, among other relevant factors, the following:

a. Any risk to the health, safety and morals of the individual.

b. The individual’s physical fitness.

c. Prior training.

d. Length of unemployment.

e. Prospects for securing local work by the individual.

f. The individual’s customary occupation.

g. Distance from the available work.

h. Whether the work offered is for wages equal to or above the federal or state minimum wage, whichever is higher.

i. Whether the work offered meets the percentage criteria established for suitable work which is determined by the number of weeks which have elapsed following the effective date of the most recent new or additional claim for benefits filed by the individual.

j. Whether the position offered is due directly to a strike, lockout, or other labor dispute.

k. Whether the wages, hours or other conditions of employment are less favorable for similar work in the locality.

l. Whether the individual would be required to join or resign from a labor organization.

24.24(16) *Disabled accessibility to job.* A job offer shall not be suitable if a disabled individual has no access to a building or its facilities.

This rule is intended to implement Iowa Code sections 96.3(3), 96.4(2), 96.4(3), 96.5(1), 96.5(3), 96.6(1), 96.11(1), 96.16, 96.19(38), and 96.29.

871—24.25(96) Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs “*a*” through “*i*,” and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

24.25(1) The claimant’s lack of transportation to the work site unless the employer had agreed to furnish transportation.

24.25(2) The claimant moved to a different locality.

24.25(3) The claimant left to seek other employment but did not secure employment.

24.25(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

24.25(5) Reserved.

24.25(6) The claimant left as a result of an inability to work with other employees.

24.25(7) The claimant failed to return to work upon the termination of a labor dispute.

24.25(8) The claimant left to enter military service, either voluntarily or by conscription. While in military service such claimant shall be considered to be on leave from employment. It shall only be considered a voluntary quit issue when upon release from military service such claimant does not return to such claimant’s employer to apply for employment within 90 days; provided, that such person shall

give evidence to the employer of satisfactory completion of such military service and further provided that such person is still qualified to perform the duties of such position.

24.25(9) Reserved.

24.25(10) The claimant left employment to accompany the spouse to a new locality. No disqualification shall be imposed when Iowa Code section 96.5(1) "b" is applicable.

24.25(11) The claimant left to get married.

24.25(12) The claimant left without notice during a mutually agreed upon trial period of employment.

24.25(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

24.25(14) Reserved.

24.25(15) Reserved.

24.25(16) The claimant is deemed to have left if such claimant becomes incarcerated.

24.25(17) The claimant left because of lack of child care.

24.25(18) The claimant left because of a dislike of the shift worked.

24.25(19) The claimant left to enter self-employment.

24.25(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

24.25(21) The claimant left because of dissatisfaction with the work environment.

24.25(22) The claimant left because of a personality conflict with the supervisor.

24.25(23) The claimant left voluntarily due to family responsibilities or serious family needs.

24.25(24) The claimant left employment to accept retirement when such claimant could have continued working.

24.25(25) The claimant left to take a vacation.

24.25(26) The claimant left to go to school.

24.25(27) The claimant left rather than perform the assigned work as instructed.

24.25(28) The claimant left after being reprimanded.

24.25(29) The claimant left in anticipation of a layoff in the near future; however, work was still available at the time claimant left the employment.

24.25(30) The claimant left due to the commuting distance to the job; however, the claimant was aware of the distance when hired.

24.25(31) The claimant left work to keep from earning enough wages during the year to adversely affect claimant's receipt of federal old-age benefits (social security).

24.25(32) The claimant left by refusing a transfer to another location when it was known at the time of hire that it was customary for employees to transfer as required by the job.

24.25(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

24.25(34) The claimant left because work was irregular due to weather conditions; however, this working condition was not unusual in claimant's type of employment.

24.25(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

a. Obtain the advice of a licensed and practicing physician;

b. Obtain certification of release for work from a licensed and practicing physician;

c. Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or

d. Fully recover so that the claimant could perform all of the duties of the job.

24.25(36) The claimant maintained that the claimant left due to an illness or injury which was caused or aggravated by the employment. The employer met its burden of proof in establishing that the illness or injury did not exist or was not caused or aggravated by the employment.

24.25(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule

shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

24.25(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

24.25(39) Reserved.

24.25(40) Where the claimant voluntarily quit in advance of the announced scheduled layoff, the disqualification period will be from the last day worked to the date of the scheduled layoff. Benefits shall not be denied from the effective date of the scheduled layoff.

This rule is intended to implement Iowa Code sections 96.3(3), 96.4(3), 96.4(5), 96.5(1), 96.5(3), 96.6(1), 96.6(2), 96.16, 96.19(6) "a," and 96.19(38).

[ARC 3247C, IAB 8/2/17, effective 9/6/17]

871—24.26(96) Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

24.26(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

24.26(2) The claimant left due to unsafe working conditions.

24.26(3) The claimant left due to unlawful working conditions.

24.26(4) The claimant left due to intolerable or detrimental working conditions.

24.26(5) The claimant was laid off by the employer for being pregnant; however, availability must still be determined.

24.26(6) Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

24.26(7) Reserved.

24.26(8) The claimant left for the necessary and sole purpose of taking care of a member of the claimant's immediate family who was ill or injured, and after that member of the claimant's family was sufficiently recovered, the claimant immediately returned and offered to perform services to the employer, but no work was available. Immediate family is defined as a collective body of persons who

live under one roof and under one head or management, or a son or daughter, stepson, stepdaughter, father, mother, father-in-law, mother-in-law. Members of the immediate family must be related by blood or by marriage.

24.26(9) The claimant left employment upon the advice of a licensed and practicing physician for the sole purpose of taking a family member to a place having a different climate and subsequently returned to the claimant's regular employer and offered to perform services, but the claimant's regular or comparable work was not available. However, during the time the claimant was at a different climate the claimant shall be deemed to be unavailable for work notwithstanding that during the absence the claimant secured temporary employment. (Family is defined as: wife, husband, children, parents, grandparents, grandchildren, foster children, brothers, brothers-in-law, sisters, sisters-in-law, aunts, uncles or corresponding relatives of the classified employee's spouse or other relatives of the classified employee or spouse residing in the classified employee's immediate household.)

24.26(10) A claimant who underwent a mandatory retirement as of a certain age because of company policy or in accordance with an agreement between the employer and union.

24.26(11) The granting of a written release from employment by the employer at the employee's request is a mutual termination of employment and not a voluntary quit. However, this would constitute a period of voluntary unemployment by the employee and the employee would not meet the availability requirement of Iowa Code section 96.4(3).

24.26(12) When an employee gives notice of intent to resign at a future date, it is a quit issue on that future date. Should the employer terminate the employee immediately, such employee shall be eligible for benefits for the period between the actual separation and the future quit date given by the claimant.

24.26(13) A claimant who, when told of a scheduled future layoff, leaves employment before the layoff date shall be deemed to be not available for work until the future separation date designated by the employer. After the employer-designated date, the separation shall be considered a layoff.

24.26(14) Rescinded IAB 7/28/99, effective 9/1/99.

24.26(15) Employee of temporary employment firm.

a. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm within three days of completion of an employment assignment and seeks reassignment under the contract of hire. The employee must be advised by the employer of the notification requirement in writing and receive a copy.

b. The individual shall be eligible for benefits under this subrule if the individual had good cause for not contacting the employer within three days and did notify the employer at the first reasonable opportunity.

c. Good cause is a substantial and justifiable reason, excuse or cause such that a reasonable and prudent person, who desired to remain in the ranks of the employed, would find to be adequate justification for not notifying the employer. Good cause would include the employer's going out of business; blinding snow storm; telephone lines down; employer closed for vacation; hospitalization of the claimant; and other substantial reasons.

d. Notification may be accomplished by going to the employer's place of business, telephoning the employer, faxing the employer, or any other currently accepted means of communications. Working days means the normal days in which the employer is open for business.

24.26(16) The claimant left employment for a period not to exceed ten working days or such additional time as was allowed by the employer, for compelling personal reasons and prior to leaving claimant had informed the employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist or at the end of ten working days, whichever occurred first, the claimant returned to the employer and offered to perform services, but no work was available. However, during the time the claimant was away from work because of the continuance of this compelling personal reason, such claimant shall be deemed to be not available for work.

24.26(17) Separation due to incarceration.

a. The claimant shall be eligible for benefits if the department finds that all of the following conditions have been met:

(1) The employer was notified by the claimant prior to the absence;

(2) Criminal charges relating to the incarceration were not filed against the individual, all criminal charges against the individual relating to the incarceration were dismissed, or the claimant was found not guilty of all criminal charges relating to the incarceration;

(3) The claimant reported back to the employer within two work days of the release from incarceration and offered services to the employer; and

(4) The employer rejected the offer of services.

b. If the claimant fails to satisfy the requirements of subparagraph 24.26(17)“a”(1), the claimant shall be considered to have voluntarily quit the employment if the claimant was absent for three work days or more under subrule 24.25(4). If the absence was two days or less, the separation shall be considered a discharge under rule 871—24.32(96). If all of the conditions of subparagraphs 24.26(17)“a”(2), (3) and (4) are not satisfied, the separation should be considered a discharge under rule 871—24.32(96).

This subrule is intended to implement Iowa Code section 96.5 and Supreme Court of Iowa decision, *Irving v. Employment Appeal Board*, 883 N.W.2d 179.

24.26(18) Reserved.

24.26(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 871—24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

24.26(20) The claimant left work voluntarily rather than accept a transfer to another locality that would have caused a considerable personal hardship.

24.26(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

24.26(22) The claimant was hired for a specific period of time and completed the contract of hire by working until this specific period of time had lapsed. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employees shall be considered to have voluntarily quit employment.

24.26(23) The claimant left work because the type of work was misrepresented to such claimant at the time of acceptance of the work assignment.

24.26(24) Reserved.

24.26(25) Temporary active military duty. A member of the national guard or organized military reserves of the armed forces of the United States ordered to temporary active duty for the purpose of military training or ordered on active state service, shall be entitled to a leave of absence during the period of such duty. The employer shall restore such person to the position held prior to such leave of absence, or employ such person in a similar position; provided, that such person shall give evidence to the employer of satisfactory completion of such training or duty, and further provided that such person is still qualified to perform the duties of such position.

24.26(26) Reserved.

24.26(27) Refusal to exercise bumping privilege. An individual who has left employment in lieu of exercising the right to bump or oust a fellow employee with less seniority shall be eligible for benefits.

24.26(28) The claimant left the transferring employer and accepted work with the acquiring employer at the time the employer acquired a clearly segregable and identifiable part of the transferring employer's business or enterprise. Under this condition, the balancing account shall immediately become chargeable for the benefits paid which are based on the wages paid by the transferring employer,

provided the acquiring employer does not receive a partial successorship, and no disqualification shall be imposed if the claimant is otherwise eligible.

This rule is intended to implement Iowa Code sections 96.3(3), 96.4(3), 96.4(5), 96.5(1), 96.5(3), 96.6(1), 96.16, and 96.19(38).

[ARC 3401C, IAB 10/11/17, effective 11/15/17]

871—24.27(96) Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on Form 65-5323, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

This rule is intended to implement Iowa Code section 96.5(1) "g."

[ARC 3248C, IAB 8/2/17, effective 9/6/17]

871—24.28(96) Voluntary quit requalifications and previously adjudicated voluntary quit issues.

24.28(1) The claimant shall be eligible for benefits even though having voluntarily left employment, if subsequent to leaving such employment, the claimant worked in (except in back pay awards) and was paid wages for insured work equal to ten times the claimant's weekly benefit amount.

24.28(2) The claimant shall be eligible for benefits even though having been previously disqualified from benefits due to voluntary quit, if subsequent to the disqualification, the claimant worked in (except in back pay awards) and was paid wages for insured work equal to ten times the claimant's weekly benefit amount.

24.28(3) Reserved.

24.28(4) Reserved.

24.28(5) The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. The employment does not have to be covered employment and does not include self-employment.

24.28(6) The claimant voluntarily left employment. However, there shall be no disqualification under Iowa Code section 96.5(1) if a decision on this same separation has been made on a prior claim by a representative of the department and such decision has become final.

24.28(7) The claimant voluntarily left employment. However, there shall be no disqualification under Iowa Code section 96.5(1) if a decision on this same separation has been made on a prior claim by the administrative law judge and such decision has become final.

24.28(8) The claimant voluntarily left employment. However, there shall be no disqualification under Iowa Code section 96.5(1) if a decision on this same separation has been made on a prior claim by the employment appeal board and such decision has become final.

This rule is intended to implement Iowa Code section 96.5(1) "a."

871—24.29(96) Business closing.

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 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. For the purposes of this rule, temporary employment means employment of a duration not to exceed four weeks.

24.29(2) Going out of business means any factory, establishment, or other premises of an employer which closes its door and ceases to function as a business; however, an employer is not considered to have gone out of business at the factory, establishment, or other premises in any case in which the employer sells or otherwise transfers the business to another employer, and the successor employer continues to operate the business.

24.29(3) Verification of going out of business. When the unemployment insurance representative is informed by the individual or has knowledge of an employer going out of business at a factory, establishment, or other premises, the unemployment insurance representative completes a Form 60-0240, Verification of Business Closing, and refers Form 60-0240 to the field audit section for assignment to a field auditor who verifies the business closing. A Form 62-2056, Review of Business Status for Closing Credits, is completed for each succeeding claimant who requests to be included in a redetermination for business closing credits. This form is added to the Form 60-0240 already in the department file for the appropriate pending investigation. Upon return of the Form 60-0240 from the field audit section, an unemployment insurance representative will issue the appropriate decisions to all claimants who requested that their unemployment insurance claim be redetermined as a business closing based on the results of the investigation.

871—24.30 Reserved.

871—24.31(96) Subsequent benefit year condition.

24.31(1) The claimant must have been paid benefits on a previous claim.

24.31(2) If the claimant has the qualifying wages for the establishment of a second benefit year as specified in Iowa Code section 96.4(4) which were earned prior to the filing of the previous claim, the claimant must, during or subsequent to that year, have worked in (except in back pay awards) and have been paid wages for insured work totaling at least eight times the claimant's weekly benefit amount from the claimant's previous benefit year as of the end of the benefit year end date. Vacation pay, severance pay and bonuses are not considered as wages for second benefit year requalification purposes.

24.31(3) Insured work means insured work in any state.

24.31(4) Employment for a railroad under the Railroad Unemployment Insurance Act is insured work.

24.31(5) The amount equal to eight times the claimant's weekly benefit amount from the claimant's previous benefit year in insured work need not be in addition to the qualifying wages for the establishment of a second benefit year.

24.31(6) Disqualification for lack of eight times the claimant's weekly benefit amount from the claimant's previous benefit year in insured work shall be removed upon the verification that the claimant worked in and has been paid wages for insured work totaling eight times the claimant's weekly benefit amount from the claimant's previous benefit year during or subsequent to the previous benefit year.

This rule is intended to implement Iowa Code section 96.4(4).

[ARC 3247C, IAB 8/2/17, effective 9/6/17]

871—24.32(96) Discharge for misconduct.

24.32(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being 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. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

b. Any individual who has been discharged or suspended for misconduct connected with work is disqualified for benefits until the individual has worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

24.32(2) Reserved.

24.32(3) *Gross misconduct.*

a. For the purposes of these rules, gross misconduct shall be defined as misconduct involving an indictable offense in connection with the claimant's employment, provided that such claimant is duly convicted thereof, has signed a statement admitting that such claimant has committed such act, or has admitted to the department that claimant has committed such act.

b. An indictable offense means a common law or statutory offense presented on indictment or on county attorney's information, and includes all felonies and all indictable misdemeanors punishable by a fine of more than \$500 or by imprisonment in the county jail for more than 30 days.

c. If gross misconduct is established, the department shall cancel the individual's wage credits earned, prior to the date of discharge, from all employers regardless of when the act occurred during the benefit year.

24.32(4) *Report required.* The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

24.32(5) *Trial period.* A dismissal, because of being physically unable to do the work, being not capable of doing the work assigned, not meeting the employer's standards, or having been hired on a trial period of employment and not being able to do the work shall not be issues of misconduct.

24.32(6) *False work application.* When a willfully and deliberately false statement is made on an Application for Work form, and this willful and deliberate falsification does or could result in endangering the health, safety or morals of the applicant or others, or result in exposing the employer to legal liabilities or penalties, or result in placing the employer in jeopardy, such falsification shall be an act of misconduct in connection with the employer.

24.32(7) *Excessive unexcused absenteeism.* Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

24.32(8) *Past acts of misconduct.* While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

24.32(9) *Suspension or disciplinary layoff.* Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

This rule is intended to implement Iowa Code section 96.5 and Supreme Court of Iowa decision, *Sheryl A. Cospers vs. Iowa Department of Job Service and Blue Cross of Iowa*.
[ARC 3401C, IAB 10/11/17, effective 11/15/17]

871—24.33(96) Labor disputes.

24.33(1) Definition. As used in sections 96.5(3) “b”(1) and 96.5(4), the term labor dispute shall mean any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment regardless of whether the disputants stand in the proximate relation of employer and employee. An individual shall be disqualified for benefits if unemployment is due to a labor dispute.

24.33(2) Initial requirements—workforce development center.

a. As soon as the workforce development center has knowledge of a labor dispute or work stoppage in its administrative area, a report on Form 68-0535, Labor Dispute Report, shall be sent to the administrative office of the department of workforce development, attention: legal counsel, unemployment insurance services division, advising of the labor dispute or work stoppage.

b. If the labor dispute or work stoppage is terminated before the report is transmitted to the legal counsel, unemployment insurance services division, the information concerning the termination of the dispute and the date of the worker’s return to work must also be entered on Form 68-0535.

c. When the labor dispute or work stoppage is terminated subsequent to the filing of the initial Form 68-0535, the legal counsel, unemployment insurance services division, shall be notified of the termination and return to work dates.

d. In those instances where an association represents a group of employers, include the names and addresses of the employers who are involved in the labor dispute in your report. Include also the name and address of the association and the name of the association official who can furnish information about the work stoppage.

e. In taking initial claims in which there is a labor dispute, the workforce development center will complete an initial application for unemployment, Form 60-0330, Application for Job Placement Assistance and/or Job Insurance, in the normal manner and will also include the union name and local union number.

f. If a claim notice is inadvertently returned by the employer to the workforce development center stating there is a labor dispute, the protest with the postmarked envelope attached shall be transmitted to the unemployment insurance service center.

g. If there is a work stoppage at the premises of an employer and it is a known fact that there has not been a union and that at present there is no union representation nor any attempt by a union to organize the workers of the plant, a statement must be taken from each individual claiming benefits.

h. Statements from each individual claiming benefits are not required on the labor dispute issue whenever there is union representation even though some of the individuals may not be union members.

i. Statements from each individual claiming benefits will be taken whenever the work stoppage is considered as a nonunion stoppage, meaning no union representation at the premises of the employer. In such cases, each individual’s statement would become a part of the evidence submitted to the administrative office of the department of workforce development.

j. When there is a termination of the work stoppage, or if the issues have not been resolved and all workers returned to work, a report must be made to the legal counsel, unemployment insurance services division. The report will include the:

(1) Date on which an agreement was reached on the issues which caused the work stoppage.

(2) Date on which the workers returned to work, or a schedule as to how the workers will return to work.

k. The requirements in subrules 24.33(1) and 24.33(2) will cover the establishment and termination reports of the work stoppage and give the information necessary for the benefits bureau to investigate the work stoppage when claims are filed on which a protest is made that the claimant is involved in a work stoppage.

l. During the period of a labor dispute, the claims involved in the labor dispute are processed as though no separation from the employer had occurred. Therefore, if an individual is still unemployed after the termination of the labor dispute, such individual has either been laid off, voluntarily left, or has

been discharged from employment, and an additional claim must be taken if the individual continues in claim status.

m. When the employer or the union requests advice and information pertaining to what action should be taken in regard to the labor dispute, the workforce development center, at that time, should obtain all the information possible from the caller for inclusion in the labor dispute report to the unemployment insurance services division.

n. The employer will receive separate notices of claim filing for each claimant and shall make any protest in the appropriate section on Form 65-5317, Notice of Claim. The employer will receive a copy of the decision which may be appealed.

o. Form 65-5317, Notice of Claim Filing, will be used by the employer to report total unemployment due to strike, lockout or other labor dispute.

p. Employer shall use Form 60-0154, Notice of Separation or Refusal of Work, or the electronic version of that form, to report separations from work by employees for reasons of voluntary leaving, misconduct and job refusal. Form 60-0154 shall not be used by employers to report labor disputes because the document is not designed for that type of an employment separation or work refusal.

24.33(3) Initial determination.

a. In any case in which the payment or denial of benefits will be determined by the provisions of Iowa Code section 96.5(4), the representative of the unemployment insurance services division shall promptly review the evidence submitted, and such additional evidence as may be required, and shall make a decision upon the issues involved under that subsection.

b. The representative of the unemployment insurance services division shall promptly notify all interested parties to the claim of the decision. Said parties shall have ten days, from the date of mailing the decision to the last known address of record, to appeal the decision.

[ARC 3248C, IAB 8/2/17, effective 9/6/17; ARC 3265C, IAB 8/16/17, effective 9/20/17]

871—24.34(96) Labor dispute—policy.

24.34(1) Reserved.

24.34(2) Union membership in and of itself is not the determinative factor in whether an individual is participating in, financing or directly interested in the labor dispute.

24.34(3) The relationship between employer and employee continues during the period of the labor dispute unless severed by the employer or employee.

a. If the relationship is severed by the employer, Iowa Code section 96.5(2) concerning discharge for misconduct shall govern.

b. If the relationship is severed by the employee, Iowa Code section 96.5(1) concerning voluntary leaving shall govern.

24.34(4) An individual who is unemployed because of a labor dispute and accepts employment elsewhere during the period of the labor dispute, must return to the previous employer when said labor dispute is settled or be subject to a determination on the issue of voluntary leaving.

24.34(5) Any individual unemployed because of failure or refusal to cross a picket line during a labor dispute shall be deemed to be involved in such labor dispute.

24.34(6) If an initial determination by the representative of the unemployment insurance services division of a labor dispute issue is appealed, the case shall be assigned to an administrative law judge, who shall receive the testimony of any party to the hearing and shall issue a decision on the labor dispute. Such decision may be appealed in conformity with these rules to the employment appeal board of the Iowa department of inspections and appeals.

24.34(7) An individual not involved in or participating in a labor dispute who failed to report to work because of a picket line shall be deemed to have voluntarily left employment. However, if the individual was subjected to hostility or violence in an attempt to cross a picket line, then the individual shall be deemed to have involuntarily left employment.

a. The division shall presume that any strike or lockout is being conducted in a lawful manner unless evidence to the contrary has been introduced. The division shall presume that any picketing is

being conducted in a peaceful manner and that ingress or egress to the employer's facility is not being unlawfully impeded.

b. The division shall presume that where an injunction has been sought against actual or threatened violence, unlawful impedance of ingress or egress, or other unlawful conduct and such injunction shall have been denied on the basis that actual or threatened unlawful conduct has not been established that the picket line is peaceful unless evidence is introduced which establishes the violent nature of picket line activity.

c. If an injunction is obtained, the division shall presume the picket line is peaceful as of the date the injunction is issued unless evidence is introduced which proves the contrary proposition.

24.34(8) A lockout is not a labor dispute if the claimant is willing to continue working under the preexisting terms and conditions of the expired collective bargaining agreement for a reasonable period of time while a new collective bargaining agreement is negotiated. A lockout is a cessation of the furnishing of work to employees or a withholding of work from them in an effort to get more desirable terms for the employer.

a. The test for determining whether a stoppage of work is a lockout or labor dispute is to determine the final cause and the party ultimately responsible for the work stoppage. If the employees have offered to continue working for a reasonable period of time under the preexisting terms and conditions of employment so as to avert a work stoppage pending the final settlement of the contract negotiations and the employer refuses to maintain the status quo by extending the expired contract, the resulting work stoppage constitutes a lockout and the claimants shall not be disqualified because of a labor dispute.

b. A cessation of employment by the employer is not a lockout if:

(1) The stoppage of work is in the same facility or another facility of the employer and the claimant is directly involved in the labor dispute and the collective bargaining negotiations will directly affect the claimant's condition of employment, or

(2) The claimant or the recognized collective bargaining agent declines an offer from the employer to extend the expired collective bargaining agreement while negotiations continue for a reasonable period of time taking into consideration the nature of the employer's business, or

(3) The employer can demonstrate that its refusal to allow employees to continue working under the terms and conditions of the expired collective bargaining agreement is due to a compelling reason of such degree that the extension of the contract would be unreasonable under the circumstances.

24.34(9) To constitute a labor dispute there must be a stoppage of work at the plant or establishment. If there is no stoppage of work, the individual who leaves employment shall be deemed to have voluntarily quit.

24.34(10) When individuals, not as a group, union, or under union direction or suggestion but individually, left their work voluntarily in protest against the discharge of a fellow employee by their employer, in an unauthorized strike, it is held to be a voluntary quit.

24.34(11) Employment offered by an employer involved in a labor dispute or an employer who becomes involved in a labor dispute prior to acceptance by the claimant is considered:

a. Not suitable if the offer is made to a person who would be a new employee or a former employee who was laid off before the labor dispute and the vacancy was created by the strike, lockout, or other labor dispute.

b. Suitable if the offer was made to a former employee, who was previously laid off, provided the position offered is not vacant because of the strike, lockout, or other labor dispute and the provisions of section 96.5(4) shall apply.

c. Suitable if the offer is made to a new employee, who was not previously laid off by the same employer, and the vacancy was not created by a labor dispute.

24.34(12) Other employment accepted during periods of labor disputes does not free the claimant from the labor dispute section of the Iowa employment security law unless the claimant severs relationship with employer and obtains bona fide employment elsewhere.

This rule is intended to implement Iowa Code sections 96.5(3) and 96.5(4).

871—24.35(96) Date of submission and extension of time for payments and notices.

24.35(1) Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

a. If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

b. If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

c. If transmitted by any means other than those outlined in paragraphs 24.35(1) “*a*” and “*b*,” on the date it is received by the division.

24.35(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

24.35(3) Delivery by mail. Any notice, report form, determination, decision, or other document mailed by the division shall be considered as having been given to the addressee to whom it is directed on the date it is mailed to the addressee’s last-known address. The date mailed shall be presumed to be the date of the document, unless otherwise indicated by the facts.

24.35(4) Electronic delivery. Any notice, report form, determination, decision, or other document sent by the division via the U.S. Department of Labor state information data exchange system shall be considered as having been given to the party to whom it is directed on the date it is submitted on the system. The date submitted shall be presumed to be the date of the document, unless otherwise indicated by the facts.

[ARC 3116C, IAB 6/7/17, effective 7/12/17; ARC 3247C, IAB 8/2/17, effective 9/6/17]

871—24.36(96) Interstate benefits.

24.36(1) An interstate claimant is an individual who claims benefits under the unemployment insurance law of one or more liable states. Interstate benefits are payable under the plan approved by the national association of state workforce agencies to unemployed individuals absent from the state(s) in which wage credits were earned.

24.36(2) The division shall determine unemployment benefit claims for interstate claimants in accordance with applicable state law and rules and shall be in substantial compliance with those rules promulgated by the United States Department of Labor as published in the Code of Federal Regulations, Chapter 20, Parts 609, 615, 616, 617, and 650.

871—24.37(96) Payment of benefits to interstate claimants.

24.37(1) Section 96.20 of the employment security law of Iowa authorizes the department to enter into reciprocal arrangements with appropriate and duly authorized agencies of other states or of the federal government, or both. In conformity with this section, the department of workforce development prescribes:

a. Applicability. This regulation shall govern the department in its administrative cooperation with other states adopting a similar regulation for the payment of unemployment insurance benefits to interstate claimants.

b. Definitions. As used in this rule unless the context clearly requires otherwise:

(1) *“Interstate benefit payment plan.”* This is the plan approved by the national association of state workforce agencies under which benefits shall be payable to unemployed individuals absent from the state (or states) in which benefit credits have been accumulated.

(2) *“Interstate claimant.”* This is an individual who claims benefits under the unemployment insurance law of one or more liable states. The term interstate claimant shall not include any individual who customarily commutes from a residence in an agent state to work in a liable state unless the department finds that this exclusion would create undue hardship on such a claimant in a specified area.

(3) *“State.”* This includes the District of Columbia, Puerto Rico, the Virgin Islands and Canada.

(4) *“Agent state.”* This means any state in which an individual files a claim for benefits from another state.

(5) *“Liable state.”* A liable state is any state against which an individual files, from another state, a claim for benefits.

(6) *“Benefits.”* This is the compensation payable to an individual, with respect to unemployment, under the employment security law of any state.

(7) *“Week of unemployment.”* This is any week of unemployment as defined in the law of the liable state from which benefits with respect to such week are claimed.

c. Registration for work.

(1) Each interstate claimant shall be registered for work, through any public employment office in the agent state when and as required by the law, rules, regulations, and procedures of the agent state. Such registration shall be accepted as meeting the registration requirements of the liable state.

(2) Each agent state shall duly report to the liable state in question whether each interstate claimant meets the registration requirements of the agent state.

d. Benefit rights of interstate claimants.

(1) If a claimant files a claim against any state, and it is determined by such state that the claimant has available benefit credits in such state, then claims shall be filed only against such state as long as benefit credits are available in that state. Thereafter, the claimant may file claims against any other state in which there are available benefit credits.

(2) For the purposes of this regulation, benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable, or whenever benefits are affected by the application of a seasonal restriction. The department will respect the prior adjudication of a liable state if the department is made aware of the decision and will apply the Iowa requalification criteria, unless the claimant has requalified pursuant to the liable state’s requalification criteria.

(3) The benefit rights of interstate claimants established by this regulation shall apply only with respect to new claims filed on or after July 5, 1953.

(4) The effective date of an interstate claim shall be the Sunday of the week the claim was filed, except if proof is obtained from another state that the claimant filed in that state and it was determined that the claim should have been filed in Iowa.

e. Claim for benefits.

(1) Claims for benefits shall be filed by interstate claimants on uniform interstate claim forms or by using the procedures provided by the liable state and in accordance with uniform procedures developed pursuant to the interstate benefit payment plan. Claims shall be filed in accordance with the type of week in use in the agent state. Any adjustments required to fit the type of week used by the liable state shall be made by the liable state on the basis of consecutive claims filed.

(2) Rescinded IAB 8/6/03, effective 9/10/03.

f. Determination of claims.

(1) In connection with each claim filed by an interstate claimant, the agent state shall ascertain and report to the liable state in question such facts relating to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent state.

(2) The agent state's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts. The agent state shall not refuse to take an interstate claim unless the liable state has a procedure for taking out-of-state claims.

g. Appellate procedure.

(1) The agent state shall afford all reasonable cooperation in the taking of evidence and the holding of hearings in connection with appealed interstate benefit claims.

(2) With respect to the time limits imposed by the law of a liable state upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant shall be deemed to have been made and communicated to the liable state on the date when it is received by any qualified representative of the agent state.

24.37(2) Extended benefits interstate claims. When extended benefits are in effect and a claimant is filing for extended benefits, an eligible individual shall be limited to a maximum of two weeks of the extended benefit entitlement if the individual moves from this state, before or during an extended benefit period triggered by this state's "on" indicator, to another state in which an extended benefit period is not in effect.

This rule is intended to implement Iowa Code sections 96.6(1) and 96.29(3).
[ARC 3811C, IAB 5/23/18, effective 6/27/18]

871—24.38(96) Combined wage claim.

24.38(1) Purpose of plan. The combined wage program is to enable an unemployed worker with covered employment or wages in more than one state to combine all such employment and wages in one state in order to qualify for benefits or to receive increased benefits.

a. Each state will cooperate with every other state by implementing these uniform combined wage procedures, rules and regulations. This includes the District of Columbia, U.S. Virgin Islands and the Commonwealth of Puerto Rico.

b. The benefit year, base period, qualifying wages, benefit rate, and duration of benefits under the unemployment compensation law of the paying state shall be the benefit year, base period, qualifying wages, benefit rate, and duration of benefits applicable to a combined wage claimant.

c. The rights of the individual under the combined wage claim plan shall be determined by the paying state after the combining of all wages available from the transferring states; however, in the case in which another state transfers wages to Iowa and Iowa is the paying state, Iowa cannot again adjudicate a separation that has been previously adjudicated by the transferring state. The department shall respect the prior adjudication of the transferring state if the department is aware of the decision and will apply the Iowa requalification criteria, unless the individual has requalified pursuant to the liable state's requalification criteria.

d. All other provisions of the unemployment compensation laws and rules of the state agency of the paying state shall be applied to the combined wage claim.

e. The state in which the claim is filed will be the paying state except in those cases in which the individual does not qualify after the transfer has been completed or if the claimant meets the definition of a commuter.

24.38(2) Exception to combining wage credits. Under the following circumstances, wages and employment are not transferable to the paying state:

a. Any employment and wages which have been transferred to any other paying state and not returned unused.

b. Wages that have been used by the transferring state as the basis of a monetary determination which established a benefit year.

c. Any employment and wages that have been canceled or are unavailable as a result of a transferring state determination made prior to the request for transfer.

24.38(3) The claimant will be told that if there was a previous election to file a combined wage claim, the claimant may withdraw the combined wage claim any time, up to the date the paying state's monetary determination becomes final. However, if the claimant withdraws a combined wage claim and benefits have been paid, the claimant will be required to repay any such benefits. This repayment may be done electronically, by cash, by check, by money order, or by an authorization to the state(s) from which such claimant next claims benefits to reimburse the combined wage paying state for any benefits which said claimant will be paid.

[ARC 3247C, IAB 8/2/17, effective 9/6/17]

871—24.39(96) Department-approved training. The intent of department-approved training is to allow for claimants to return to the labor market after attending vocational training while being paid unemployment insurance benefits. Vocational training is nonacademic, skill-oriented training that provides the student with job tools and skills that can be used in the workplace. Vocational training includes technical, skill-based, or job readiness training intended for pursuing a career. Upon approval from the department, the claimant shall be exempt from the work search requirement for continued eligibility for benefits. In order to be eligible for department-approved training programs and to maintain continuing participation therein, the individual shall meet the following requirements:

24.39(1) The claimant must make application to the department setting out the following:

- a. The educational establishment at which the claimant would receive training.
- b. The estimated time required for such training.
- c. The date the training will be complete or the degree will be obtained.
- d. The occupation which the training is allowing the claimant to maintain or pursue.
- e. The training plan, indicating the requirements which must be met in order to complete the certification or degree.

24.39(2) A claimant may receive unemployment insurance while attending a training course approved by the department, under the following conditions:

- a. The educational establishment must be a college, university or technical training institution.
- b. The training must be completed 104 weeks or less from the start date.
- c. The individual must be enrolled and attending the training program as a full-time student.

While attending the approved training course, the claimant need not be available for work or actively seeking work. After completion of department-approved training, the claimant must, in order to continue to be eligible for unemployment insurance, place no restriction on employability. The claimant must be able to work, be available for work and be actively searching for work. In addition, the claimant may be subject to disqualification for any refusal of work without good cause after the claimant has completed the training.

24.39(3) The claimant must show satisfactory attendance and progress in the training course prior to being considered for a subsequent approval and must demonstrate that such claimant has the necessary finances to complete the training to substantiate the expenditure of unemployment insurance funds.

[ARC 3247C, IAB 8/2/17, effective 9/6/17; ARC 3562C, IAB 1/3/18, effective 2/7/18]

871—24.40(96) Training extension benefits.

24.40(1) The purpose of training extension benefits is to provide the individual with continued eligibility for benefits so that the individual may pursue a training program for entry into a high-demand or high-technology occupation. Training extension benefits are available to an individual who was laid off or voluntarily quit with good cause attributable to the individual's employer from full-time employment in a declining occupation or is involuntarily separated from full-time employment as a result of a permanent reduction of operations.

24.40(2) The weekly benefit amount shall be pursuant to the same terms and conditions as regular unemployment benefits and the benefits shall be for a maximum of 26 times the weekly benefit amount of the claim which resulted in eligibility. Both contributory and reimbursable employers shall be relieved of charges for training extension benefits.

24.40(3) The course or courses must be full-time enrollment for a high-demand or high-technology occupation. The department will make available to serve as a guide a list of high-demand,

high-technology, and declining occupations. The lists shall be available on the department's website and at workforce centers.

a. High-technology occupations include life sciences, advanced manufacturing, biotechnology, alternative fuels, insurance, environmental technology, and technologically advanced green jobs. A high-technology occupation is one which requires a high degree of training in the sciences, engineering, or other advanced learning area and has work opportunities available in the labor market area or the state of Iowa.

b. A high-demand occupation means an occupation in a labor market area or the state of Iowa as a whole in which the department determines that work opportunities are available.

c. A declining occupation has a lack of sufficient current demand in the individual's labor market area or the state of Iowa for the occupational skills possessed by the individual, and the lack of employment opportunities is expected to continue for an extended period of time.

d. A declining occupation includes an occupation for which there is a seasonal variation in demand in the labor market or the state of Iowa, and the individual has no other skill for which there is a current demand.

e. A declining or high-demand occupation will be determined by using Iowa labor market information for each region in the state.

24.40(4) The application for training benefits must be received within 30 days after state or federal benefits are exhausted. The individual must be enrolled and making satisfactory progress to complete the training program in order to continue to be eligible for training extension benefits.

24.40(5) Training benefits shall cease to be available if the training is completed; the individual quits the training course; the individual exhausts the training extension maximum benefit amount; or the individual fails to make satisfactory progress; and benefits shall cease no later than the end of the benefit year in which the individual became eligible for the benefits. Individuals must file and receive benefits under any federal or state unemployment insurance benefit program until the benefits have been exhausted, in order to maintain eligibility for training extension benefits.

This rule is intended to implement 2009 Iowa Code Supplement section 96.3(5).
[ARC 871IB, IAB 5/5/10, effective 6/9/10; ARC 3562C, IAB 1/3/18, effective 2/7/18]

871—24.41(96) Unemployed parents program (FIP/UP). Under Public Law 94-566, an unemployed parent who is eligible for both unemployment insurance and family investment program/unemployed parent (FIP/UP) shall be required to collect any unemployment insurance to which the individual is entitled before receiving any payments under the FIP/UP program.

This rule is intended to implement Iowa Code chapter 91 and Public Law 94-566.

871—24.42(96) Retention of DHS referral form. When an unemployed parent presents the DHS referral Form PA-2138-5 to the workforce development center representative, the representative will take the form, sign it and complete an application for job placement assistance and/or employment insurance benefits.

24.42(1) The weekly benefit amount and maximum benefit amount of the claimant will be entered in job service comments on Form PA-2138-5. If the person is not monetarily eligible, that notation will be entered and the form mailed to human services.

24.42(2) A FIP/UP claimant may have the claim protested which can affect eligibility. Human services may request additional information on a subsequent Form PA-2138-5 concerning nonmonetary allowances or disqualifications on the claim, which will be furnished in the comments section of the form.

This rule is intended to implement Iowa Code chapter 91 and Public Law 94-566.

871—24.43 and 24.44 Reserved.

871—24.45(96) Trade Act of 1974. Unemployment benefits payable to claimants under the Trade Act of 1974 (P.L. 93-618), shall be determined in accordance with the rules of the United States department of labor as published in the Code of Federal Regulations, chapter 29, parts 70 and 91. The Trade Act

of 1974 is designed to pay unemployment benefits to workers who become unemployed due to foreign production of goods replacing domestic production.

871—24.46(96) Extended benefits.

24.46(1) Purpose. Extended benefits are benefits paid to an eligible individual during periods of high unemployment in a state under the Federal-State Extended Unemployment Compensation Act of 1970 and the Extended Benefit Program Regulations under 20 Code of Federal Regulations Part 615. The purpose of extended benefits is to extend the period of time for which an individual may receive benefits to allow the individual additional time to locate employment in recognition of the likelihood that employment is more difficult to find during periods of high unemployment in a state. The cost of extended benefits is shared between the federal and state governments.

24.46(2) Determination of when extended benefits are paid.

a. When paid. The state “on” indicator determines when extended benefits are paid in this state. A state “on” indicator is in effect during a week for which the rate of insured unemployment is 5 percent or greater and 120 percent or greater than the average of the rates of insured unemployment for the same week in the two immediately preceding calendar years.

b. When not paid. The state “off” indicator determines when extended benefits are not paid in this state. A state “off” indicator is in effect during a week for which the rate of insured unemployment is less than 5 percent or less than 120 percent of the average of the rates of insured unemployment for the same week in the two immediately preceding calendar years.

c. Period of payment. The extended benefit period is the period of time when extended benefits are paid in this state. An extended benefit period begins with the third week following a week for which there is a state “on” indicator in effect. An extended benefit period ends either with the completion of the thirteenth consecutive week beginning with the third week following a state “on” indicator, or later, with the completion of the third week following the first week for which there is a state “off” indicator. However, another extended benefit period shall not begin until the fourteenth week following the end of a previous extended benefit period.

d. Rate of insured unemployment. For the purposes of this subrule, the rate of insured unemployment means the percentage derived by dividing the average weekly number of individuals filing claims for regular benefits (excluding state plant closing benefits and benefits paid to federal civilian employees and ex-servicemembers under 5 U.S.C., chapter 85) in this state for weeks of unemployment with respect to the most recently completed 13-consecutive-week period by the average monthly insured employment for the first four of the six most recently completed calendar quarters immediately preceding the end of the 13-week period.

24.46(3) Announcement and notice of the beginning and ending of an extended benefit period.

a. Announcement by director. The beginning or ending date, whichever is appropriate, of an extended benefit period is announced by the director of the department of workforce development through appropriate news media in this state. As the case may be, the announcement clearly describes the unemployed individuals who may become eligible or ineligible for extended benefits.

b. Notice to individuals. The Form 65-5309, Notice to Individuals, is used by the department to notify individuals of:

(1) The beginning of an extended benefit period. The notice of potential entitlement to extended benefits is sent to each individual who has exhausted all rights to regular benefits either prior to the beginning of, or during, the extended benefit period and who has a benefit year which will not end prior to the beginning of the extended benefit. The notice describes those actions required of the individual to claim the extended benefits.

(2) The ending of an extended benefit period. The notice of termination of entitlement to extended benefits is sent to each individual who is currently filing a claim for extended benefits of the ending of an extended benefit period. The notice describes the effect on the individual’s right to extended benefits.

24.46(4) Amount and duration of extended benefits.

a. Weekly extended benefit amount. An individual’s weekly extended benefit amount paid for a week of total unemployment during the individual’s eligibility period is equal to the individual’s weekly

regular benefit amount paid for a week of total unemployment during the individual's applicable benefit year.

b. Duration of extended benefits. The total amount of extended benefits which an individual may receive during the individual's applicable benefit year is limited to 50 percent of the total amount of regular benefits, excluding any state plant closing benefits, received by the individual during that benefit year or 13 times the individual's weekly regular benefit amount paid for a week of total unemployment during that benefit year whichever is less; however, an individual is limited to two weeks of extended benefits if the individual files an interstate claim for extended benefits in a state in which an extended benefit period is not in effect.

c. Eligibility period. The eligibility period is the period of weeks in and after an individual's benefit year which begin in an extended benefit period when an individual is eligible to receive extended benefits; however, if a benefit year ends within an individual's eligibility period for extended benefits, the remaining extended benefits which the individual is entitled to receive in that portion of the eligibility period which extends beyond the end of the individual's benefit year, is reduced, but not below zero, by an amount arrived at by multiplying the number of weeks of Federal Trade Readjustment Act benefits received by the individual during the benefit year times the individual's weekly extended benefit amount.

d. Applicable benefit year. The applicable benefit year includes the period of one year from the date that an individual files a valid claim for benefits and any weeks following this one-year period in which the individual's eligibility period for extended benefits has not expired and the individual is not able to establish a second benefit year for regular benefits.

24.46(5) Eligibility requirements for extended benefits. Except where the results are inconsistent with the provisions of the Federal-State Extended Unemployment Compensation Act of 1970 as amended and the Extended Benefit Program Regulations under 20 Code of Federal Regulations Part 615, the provisions of this state's law which apply to claims for, and the payment of, regular benefits apply to claims for, and the payment of, extended benefits. An individual is eligible to receive extended benefits for a week of unemployment during the individual's eligibility period if the department finds that all of the following conditions are met:

a. The individual is an exhaustee. An exhaustee is an individual who has exhausted all entitlements to regular benefits under this or any other state law as well as federal civilian employee, railroad unemployment insurance, and ex-servicemember benefits.

An individual is also an exhaustee:

(1) If the individual may be entitled to additional regular benefits as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in the individual's benefit year.

(2) If the individual's benefit year has expired prior to the week, and the individual has no, or insufficient, wages on the basis of which to establish a new benefit year.

(3) If the individual has no right to benefits under other laws of the federal government, as specified in the regulations issued by the United States Secretary of Labor, or a contiguous country with which the United States has an agreement, but if the individual is seeking benefits and the appropriate agency finally determines that the individual is not entitled to the benefits, then the individual is an exhaustee.

b. The individual has one and one-half times the high quarter wages. An individual is required to have been paid wages for insured work during the individual's base period in an amount at least one and one-half times the wages paid to the individual during that quarter of the individual's base period in which the individual's wages were highest.

c. The individual is required to actively seek, apply for or accept, suitable work. When an individual files an initial claim for extended benefits, the Form 60-0274, Notice for Individuals Claiming Extended Benefits, is used to determine the individual's prospects for obtaining work and to notify the individual that, beginning with the week following the week in which the individual is furnished this notice:

(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 percent of the individual's average weekly wage from the highest earnings quarter of the individual's base period.

(2) If the individual's prospects for obtaining work within a reasonably short period are "not good," the individual is required to actively seek, apply for or accept, suitable work which is within the individual's capabilities to perform and which offers a gross average weekly wage which exceeds the individual's weekly extended benefit amount for a week of total unemployment plus any supplemental unemployment benefits; however, the individual is not required to actively seek, apply for or accept, work which offers a gross average weekly wage less than the federal or state minimum wage whichever is higher.

(3) For the purposes of this paragraph, reasonably short period means four weeks. If an individual whose prospects for obtaining work are "good" has not secured work within four weeks following the week in which the individual is furnished the Form 60-0274, Notice to Individuals Claiming Extended Benefits, then the individual is notified on Form 65-5309, Notice to Individuals, that the individual's prospects for obtaining work are now considered as "not good."

(4) For the purposes of this paragraph, actively seeking work means that, for each week following the week in which the individual is furnished the Form 60-0274, Notice to Individuals Claiming Extended Benefits, the individual is required to provide tangible evidence on the weekly claim for benefits that the individual is making a systematic and sustained effort to search for suitable work.

(5) If prospects are determined to be "not good," an individual shall not be disqualified for failing to apply for or accept work which is not offered in writing or is not listed with this state's employment service.

d. The individual is required to requalify following a disqualification for failure to actively seek, apply for or accept, suitable work. To become eligible for extended benefits following a disqualification for failure to actively seek, apply for or accept, suitable work, the individual is required to be employed in insured work for four weeks, which need not be consecutive, and earn four times the individual's weekly extended benefit amount.

871—24.47(96) Disaster benefits. Benefits under the Disaster Relief Act of 1974. Unemployment benefits payable under Public Law 93-288, the Disaster Relief Act of 1974, will be determined in accordance with the rules of the United States Department of Labor and published in the Code of Federal Regulations, Chapter 20, Parts 625 and 650, and Chapter 32, Part 1710.16. These benefits are payable to claimants who are unemployed due to natural disasters. A claimant who is eligible for regular unemployment benefits shall not be eligible for disaster unemployment assistance.

871—24.48(96) UCFE claims. Benefits under the Federal Employer's Compensation Act. Unemployment benefits for civilian federal employees shall be determined in accordance with the applicable state law and rules as well as the rules of the United States Department of Labor and published in the Code of Federal Regulations, Chapter 20, Parts 609, 615, 616, 617, and 650. These benefits are payable under the Federal Employer's Compensation Act, 5 U.S.C. 8101-8150, 8191-8193, and are based on wages earned by civilians in covered federal employment.

871—24.49(96) UCX claims. Benefits under the Ex-servicemember's Unemployment Compensation Act.

24.49(1) Applicable law. Unemployment benefits for ex-military personnel shall, in addition to being determined in accordance with applicable Iowa law and rules, be determined in substantial compliance with the rules and guidelines of the United States Department of Labor and published in the Code of Federal Regulations, Chapter 20, Parts 614 and 650.

24.49(2) When payable. These benefits are payable under the Ex-servicemember's Unemployment Compensation Act of 1958, 5 U.S.C. 8850. They allow unemployment compensation to be based on wages earned while on active military duty.

871—24.50(96) Temporary extended unemployment compensation.

24.50(1) to 24.50(5) Rescinded IAB 8/6/03, effective 9/10/03.

24.50(6) Overpayments will be offset up to and including 100 percent of the federal temporary extended unemployment compensation benefit payment.

24.50(7) Waiver of overpayments.

a. Individuals who have received amounts of temporary extended unemployment compensation to which they were not entitled shall be required to repay the amounts of such temporary extended unemployment compensation except that the state repayment may be waived if the workforce development department determines that:

(1) The payment of such temporary extended unemployment compensation was without fault on the part of the individual; and

(2) Such repayment would be contrary to equity and good conscience.

b. In determining whether fault exists, the following factors shall be considered:

(1) Whether a material statement or representation was made by the individual in connection with the application for temporary extended unemployment compensation that resulted in the overpayment and whether the individual knew or should have known that the statement or representation was inaccurate.

(2) Whether the individual failed or caused another to fail to disclose a material fact in connection with an application for temporary extended unemployment compensation that resulted in the overpayment and whether the individual knew or should have known that the fact was material.

(3) Whether the individual knew or could have been expected to know that the individual was not entitled to the temporary extended unemployment compensation payment.

(4) Whether, for any other reason, the overpayment resulted directly or indirectly, and partially or totally, from any act or omission of the individual or of which the individual had knowledge and which was erroneous or inaccurate or otherwise wrong.

c. In determining whether equity and good conscience exist, the following factors shall be considered:

(1) Whether the overpayment was the result of a decision on appeal;

(2) Whether the state agency had given notice to the individual that the individual may be required to repay the overpayment in the event of a reversal of the eligibility determination on appeal; and

(3) Whether recovery of the overpayment will cause financial hardship to the individual.

This rule is intended to implement Iowa Code sections 96.11 and 96.29.

[ARC 3303C, IAB 8/30/17, effective 10/4/17]

871—24.51(96) School definitions.

24.51(1) Educational institution means public, nonprofit, private and parochial schools in which participants, trainees, or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes or abilities from, by or under the guidance of an instructor or teacher. It is approved, licensed or issued a permit to operate as a school by the department of education or other government agency that is authorized within the state to approve, license or issue a permit for the operation of a school. The course of study or training which it offers may be academic, technical, trade, or preparation for gainful employment in a recognized occupation.

24.51(2) Educational service agency means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing educational services to one or more educational institutions.

24.51(3) Employment definitions.

a. Professional employees including educational service agency employees means persons who are employed in an instructional, research or principal administrative capacity as explained below:

(1) Instructional: Services performed for an educational institution which consist of teaching in formal classroom and seminar situations, tutoring, or lecturing in the activity of imparting knowledge; or of services which consist of directing or supervising the instructional activities of others; or services

which consist of counseling, advising, or otherwise determining curriculum, courses, and academic pursuits for students.

(2) **Research:** Services performed for an educational institution which consist of careful and systematic study and investigation in a field of science and knowledge, undertaken to establish facts or principles. The work performed is in a predominantly intellectual field or artistic endeavor which is varied in character and requires the constant exercise of discretion and judgment in performance. The work further requires advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study.

(3) **Principal administrative:** Services performed for an educational institution which consist of managing the educational institution or one of its major divisions or departments. Such services include the responsibility for establishing and administering policies, rules, and regulations which have major impact on the overall operations and functions of the educational institutions or one of its major divisions or departments. Work and activities are performed under general direction and broad objectives and missions, with the authority to determine goals and the techniques and methods of operations of the educational institution or one of its major divisions or departments. The duties performed by the individual rather than the title held should determine whether the prohibition applies. Neither providing a title nor withholding it should be controlling in itself.

b. Nonprofessional employees including educational service agency employees means persons who perform services in any capacity for an educational institution other than in an instructional, research, or principal administrative capacity.

24.51(4) Holiday recess. See vacation period subrule 24.51(8).

24.51(5) Institution of higher education means an educational institution which admits as regular students individuals having a certificate of graduation from a high school, or the recognized equivalent of such certificate; is legally authorized in this state primarily to provide a program of education beyond high school; provides an educational program for which it awards a bachelor's or higher degree or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and is a public or other nonprofit institution.

24.51(6) Reasonable assurance, as applicable to an employee of an educational institution, means a written, verbal, or implied agreement that the employee will perform services in the same or similar capacity, which is not substantially less in economic terms and conditions, during the ensuing academic year or term. It need not be a formal written contract. To constitute a reasonable assurance of reemployment for the ensuing academic year or term, an individual must be notified of such reemployment.

24.51(7) School duration period.

a. Academic year is defined as that period of time that school personnel are obligated by contract to render services to the educational institution during the school year.

b. Term is defined as either of the two periods into which the yearly period of instruction is normally divided, commonly referred to as a semester. If the educational institution operates on a quarterly basis, then term shall mean the same as a quarter period. If the educational institution operates on a trimester basis, then term shall mean the same as a trimester period or any other division in a school year during which instruction is regularly given to students.

c. Twelve-month employment. School employees that perform services for educational institutions 12 months of a calendar year or years.

24.51(8) Vacation period or holiday recess. In Iowa Code section 96.4(5), the term "established and customary" vacation period or holiday recess involved in this provision includes those scheduled at Christmas and in the spring, when those vacation periods or recesses occur within a term.

24.51(9) Between terms or academic years denial means any week of unemployment which begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or reasonable assurance that the individual will

perform services in any such capacity for any educational institution for both such terms or academic years.

871—24.52(96) Determining eligibility of school claims after employer protest.

24.52(1) Claim filed. When a claim has been filed by an employee of an educational institution, the department shall send a Form 65-5317, Notice of Claim, to the educational institution and such educational institution wishing to protest such a claim shall return such notice to the department and shall include on it a statement as to whether or not the individual who filed a claim had been given reasonable assurance for the ensuing academic year or term. The statement should include the date and method of such notification. A copy of the notification may be attached to Form 65-5317, Notice of Claim.

24.52(2) If the statement from the school indicates that there is no reasonable assurance of the employee returning to work for the ensuing academic year or term, the claim will be allowed, subject to meeting all other eligibility requirements. However, if an educational institution submits a statement or the claimant furnishes information concerning a reasonable assurance of school employment, the employee is subject to a denial of benefits. If the fact-finding should result in a disqualification, the effective starting date of the disqualification shall be determined as follows:

a. No earlier than the effective starting date of the claim as it would serve no useful purpose. If the job offer was prior to the beginning date of the claim and the claimant refuses the offer, the issue shall still be adjudicated since the issue is determined as a voluntary quit rather than a job refusal pursuant to subrules 24.25(37) and 24.26(19).

b. The Sunday of the week in which the job was offered under any of the following conditions:

(1) The employer protest was made within ten-day protest period.

(2) The department was notified within ten days of the date of the offer.

(3) The claimant was in a reporting status on a claim for unemployment insurance at the time the offer was made and the claimant failed to notify the department of the offer.

c. The Sunday of the week in which the claimant or employer notified this department of the offer unless the offer was prior to the week that the department was notified of the offer and the claimant was in reporting status on a claim for unemployment insurance at that time. In this situation, the effective starting date of disqualification shall be the Sunday of the week in which the job offer was made.

d. The Sunday of the week in which the employer notified the department of the offer to the claimant. A refusal to accept the offer of employment shall be adjudicated under the voluntary quit section of the law pursuant to subrules 24.25(37), 24.26(19) and 24.52(11).

24.52(3) Professional employee. Unemployment insurance payments which are based on school employment shall not be paid to a professional employee for any week of unemployment which begins between two successive academic years, between regular terms, or during a period of paid sabbatical leave if the individual has a contract or reasonable assurance to perform services in any such capacity for any educational institution for both such academic years or both such terms. However, unemployment insurance payments can be made which are based on non-school-related wage credits pursuant to subrule 24.52(6).

24.52(4) Nonprofessional employee.

a. Unemployment insurance payments which are based on school employment shall not be paid to a nonprofessional employee for any week of unemployment which begins between two successive academic years or terms if the individual has performed service in the first of such academic years or terms and there is a reasonable assurance that such individual will perform services for the second academic year or term. However, unemployment insurance payments can be made based on non-school-related wage credits pursuant to subrule 24.52(6).

b. The nonprofessional employee may qualify for retroactive unemployment insurance payments if the school employment fails to materialize in the following term or year and the individual has filed weekly or biweekly claims on a current basis during the between terms denial period pursuant to subrule 24.2(1), paragraph "e."

24.52(5) Twelve-month, year-round employee. An educational institution employee who performs services on a 12-month, year-round basis whose employment is terminated through layoff or reduction in force prior to the completion of the 12-month period, is eligible for benefits and shall not be disqualified under the provisions of Iowa Code section 96.4(5). An offer of reemployment to the 12-month, year-round employee for the succeeding academic year or term shall be adjudicated under Iowa Code section 96.5(3), regarding offers of suitable work and no disqualification may be imposed prior to the week in which the employment is scheduled to commence.

24.52(6) Benefits which are denied to an individual that are based on services performed in an educational institution for periods between academic years or terms shall cause the denial of the use of such wage credits. However, if sufficient nonschool wage credits remain on the claim to qualify under Iowa Code section 96.4(4), the remaining wage credits may be used for benefit payments, if the individual is otherwise eligible.

24.52(7) Head start programs are considered educational in nature; however, the employing unit as a whole must have as its primary function the education of students. When the employing unit is operated primarily for educational purposes then the between terms denial established by Iowa Code section 96.4(5) will apply between two successive academic years or terms and will apply for holiday and vacation periods to deny benefits to school personnel.

a. A nonprofit organization which has as its primary function civic, philanthropic or public assistance purposes does not meet the definition of an educational institution. Community action programs which have a head start school as one component are not an educational institution employer and the between terms denial does not apply.

b. A head start program which is an integral part of a public school system conducted by a board of education establishes an employing unit whose primary function is educational; therefore, the between terms denial would apply.

24.52(8) Wages earned and payment deferred. Many school employees receive remuneration from their school employers on a 12-month basis for the 9-month period worked. Deductions from unemployment insurance payments are on a “when earned” basis rather than on a “when paid” basis. Deferred wages currently paid which are based on earnings from a prior period are not deductible on a current week claimed pursuant to Iowa Code section 96.19(9) “b” and paragraph 24.13(2) “o.”

24.52(9) Vacation period and holiday recess. With respect to any services performed in any capacity while employed by an educational institution, unemployment insurance payments shall not be paid to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs service in the period immediately before such vacation period or holiday recess and there is a reasonable assurance that such individual will perform service in the period immediately following such vacation period or holiday recess. However, the provision of subrule 24.52(6) could also apply in this situation.

24.52(10) Substitute teachers.

a. Substitute teachers are professional employees and would therefore be subject to the same limitations as other professional employees in regard to contracts, reasonable assurance provisions and the benefit denials between terms and during vacation periods.

b. Substitute teachers who are employed as on-call workers who hold themselves available for one employer and who will not search for or accept other work, are not available for work within the meaning of the law and are not eligible for unemployment insurance payments pursuant to subrule 24.22(2) “i”(1).

c. Substitute teachers whose wage credits in the base period consist exclusively of wages earned by performing on-call work are not considered to be unemployed persons pursuant to subrule 24.22(2) “i”(3).

d. However, substitute teachers engaged in on-call employment are not automatically disqualified but may be eligible pursuant to subrule 24.22(2) “i”(3) if they are:

- (1) Able and available for work.
- (2) Making an earnest and active search for work each week.
- (3) Placing no restrictions on their employability.

(4) Show attachment to the labor market. Have wages other than on-call wages with an educational institution in the base period.

e. A substitute teacher who elects not to report for further possible assignment to work shall be considered to have voluntarily quit pursuant to subrule 24.26(19).

24.52(11) Declination of new contract or reasonable assurance.

a. The school employee who is not employed on a 12-month, year-round basis and who fails or refuses to accept a contract or reasonable assurance of employment in the succeeding academic term or year shall have the separation adjudicated under the voluntary quit provision of Iowa Code section 96.5(1) pursuant to subrule 24.25(37).

b. This subrule also applies to substitute teachers who fail or refuse to accept a contract or reasonable assurance of employment in the succeeding academic term or year pursuant to subrules 24.26(19) and 24.26(22).

24.52(12) Delayed offer and acceptance of a contract or reasonable assurance of employment in the succeeding term or year. School employees who are not offered a contract or reasonable assurance of employment in the succeeding academic term or year are eligible for benefits if all other eligibility conditions are met. However, school employees who subsequently receive a contract or reasonable assurance of employment for the following term or year shall be disqualified under the “between terms denial” provision.

24.52(13) Continuing supplemental (part-time) school employment after loss of nonschool employment. All employers, including employers of part-time workers are notified of the filing of a claim. The school employer who continues to furnish part-time employment to the claimant may make a protest on the basis that the individual is still employed at the part-time employment and request removal of any charges to the part-time employer account, whether contributory or reimbursable, pursuant to Iowa Code section 96.7(3) “a”(2).

871—24.53(96) Noncovered school-related employment.

24.53(1) Pursuant to rule 871—23.20(96), wages earned by a student who performs services in the employ of a school at which the student is enrolled and is regularly attending classes (either on a full-time or part-time basis) cannot be used as wage credits for claim or benefit purposes. However, wages earned by an individual who is a full-time employee for a school whose academic pursuit is incidental to the full-time employment may be used for claim and benefit purposes.

24.53(2) Pursuant to rule 871—23.20(96), wages earned by the spouse of such a student in employment with the educational institution attended by the student cannot be used for benefit purposes if the employee-spouse is told prior to commencing the employment that the work is part of a program to provide financial assistance to the student and is not covered by unemployment insurance.

24.53(3) Pursuant to rule 871—23.21(96), wages earned by a student who is enrolled at a nonprofit or public educational institution under a program taken for credit at such institution that combines academic instruction with work experience are normally excluded from the definition of employment. Provided, however, that work performed by such individual in excess of the hours called for in the contract between the school and the employer or performed in a period of time during which the institution is on a regularly scheduled vacation and for which such student receives no academic credit shall be considered as insured employment.

871—24.54(96) Church school coverage. Schools affiliated with a church are exempt from coverage but may volunteer coverage by request to the department of workforce development. Schools not affiliated with a church are covered employers with covered employment. Church school coverage is defined pursuant to rule 871—23.27(96).

871—24.55 and 24.56 Reserved.

871—24.57(96) Athletes—disqualifications. “Athletes” as used in Iowa Code section 96.5(9), is intended to apply to professional athletes. A professional athlete is an individual whose occupation is

participating in athletic or sporting events for wages. A semiprofessional athlete is within the scope of Iowa Code section 96.5(9), if such sports services are compensation in covered wages. Auxiliary personnel, such as coaches, trainers, etc., are not considered professional athletes and are not within the scope of Iowa Code section 96.5(9).

24.57(1) As used in Iowa Code section 96.5(9), “any services, substantially all of which consist of participating in sports or athletic events” means all services performed by an individual in any subject employment during the individual’s base year if such individual was engaged in remunerative sports or athletic events for 90 percent or more of the total time spent in subject employment during such base year.

24.57(2) As used in Iowa Code section 96.5(9), “participating in sports or athletic events” means any services performed in an athletic activity by an individual as:

- a. A regular player or team member.
- b. An alternate player or team member.
- c. An individual in training to become a regular player or team member.
- d. An individual who, although performing no active services, is retained as a player or team member while recuperating from illness or injury.

24.57(3) The beginning and ending dates of any sport season and the beginning and ending dates of the time period between two successive sport seasons shall be determined by the department after taking into consideration factors of custom and practice within a particular sport, published dates for beginning and ending of a season and any other information bearing upon such determination.

24.57(4) For the purposes of Iowa Code section 96.5(9), a reasonable assurance that an individual will perform services in sports or athletic events in a subsequent season is presumed to exist if:

- a. The individual has an express or implied multiyear contract which extends into the subsequent sport season, or,
- b. The individual is free to negotiate with other teams or employers for employment as a participant in the subsequent sport season, and
- c. There is reason to believe that one or more employers of participants in athletic events is considering or would be desirous of employing the individual in an athletic capacity in the subsequent sport season, and
- d. The individual has not clearly and affirmatively withdrawn from participating in remunerative and competitive sports or athletic events.

24.57(5) Benefits which will be paid with respect to weeks of unemployment during a sports season shall be based on all wage credits of the individual. Wage credits would include those earned in sports as well as in other employment covered by an employment security law. With respect to weeks of unemployment that begin during a period between sports seasons (or similar periods) no benefits are payable on the basis of any athletic or nonathletic wages if substantially all (see subrule 24.57(1)) of the services performed by the individual during the base period were in sports or athletic events.

24.57(6) When a professional athlete is denied benefits because there is a reasonable assurance that the individual will again perform services as a professional athlete in the next ensuing season but the assurance fails to materialize, the denial of benefits is effective until the date established that the assurance is ineffective. Following the ineffective date, benefits can be paid if the individual is otherwise eligible. If an assurance given to an individual is found to be not a bona fide assurance, benefits are payable if the individual is otherwise eligible.

24.57(7) Benefits will be paid with respect to weeks of unemployment between sports seasons (or similar periods) based on wage credits of the individual, paid in other employment covered by employment security law except those in sports or athletic events or training, or preparing to so participate.

24.57(8) Athletes—denial of benefits. An individual (athlete) will be denied benefits between seasons based on services performed by such individual (athlete).

This rule is intended to implement Iowa Code section 96.5(9).

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. 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.

24.58(1) A shared work plan will last no longer than 52 weeks from the date on which the plan is first effective. The minimum length of a plan is four weeks.

24.58(2) Employment is considered seasonal if the production or service provided by the employment is curtailed by at least 45 percent or ceases for a four-month or longer period on an annual basis due to climatic conditions.

24.58(3) A plan which has been approved may be modified at the discretion of the department. An employer seeking modification of an approved plan must demonstrate good cause as to why the modification is necessary and must demonstrate that the factors necessitating the modification were not foreseeable at the time the plan was submitted.

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 including, but not limited to, the providing of false or misleading information to the department, unequal treatment of any employee in the affected unit, a reduction in fringe benefits resulting from participation in the program, or failure by the employer to monitor and administer the program.

24.58(5) The employer may file in writing an appeal of a denial of approval of a plan or revocation of approval by the department within 30 days from the date the decision is issued. The employer's appeal will be forwarded to the appeals section so that a hearing may be scheduled before an administrative law judge.

24.58(6) If the employer provides as part of the plan a training program that will provide a substantive increase in the workplace and employability skills of the employee so as to reduce the potential for future periods of unemployment, the department shall consider the employee to be attending department-approved training and shall relieve the employer of charges for benefits paid to the individual attending training under the plan.

This rule is intended to implement 2009 Iowa Code Supplement section 96.40 as amended by 2010 Iowa Acts, Senate File 2279.

[ARC 8711B, IAB 5/5/10, effective 6/9/10]

871—24.59(96) Child support intercept. An individual who owes a child support obligation and who has been determined to be eligible for unemployment insurance benefits under Iowa Code chapter 96, shall have this information furnished to the child support recovery unit. The department of workforce development shall deduct and withhold from benefit payments the amount which is specified by the child support recovery unit. The term "benefits" for child support intercept purposes shall be defined as meaning any compensation payable under Iowa Code chapter 96, including any amounts payable pursuant to any workforce development agreement under any federal law administered by the department.

24.59(1) *Information furnished to child support recovery unit.* The department of workforce development shall furnish information to the child support recovery unit concerning all new claims

filed that are monetarily eligible for benefits under any state or federal program administered by the department.

24.59(2) *Action taken by child support recovery unit.* The child support recovery unit shall contact the claimant so that an opportunity is afforded to the claimant for a signed agreement to have a specified amount deducted and withheld from the claimant's benefits. The child support recovery unit shall submit a copy of the signed agreement to the department of workforce development and the department shall deduct and withhold the amount specified in the agreement.

24.59(3) *Garnishments.* Failure of the child support recovery unit to reach an agreement with the claimant for a specified amount to be deducted may result in the child support recovery unit initiating a garnishment action through legal process under Iowa Code chapter 642. The department of workforce development shall deduct and withhold from the claimant's benefits the amount specified. Notwithstanding section 96.15, benefits under chapter 96 are not exempt from garnishment, attachment, or execution if garnished by the child support recovery unit as established in Iowa Code section 252B.2, to satisfy the child support obligation of an individual who is eligible under this chapter. Child support obligation is defined as only those obligations which are enforced pursuant to the plan as described in Section 454 of the Social Security Act under Part D of Title IV entitled "State Plan for Child Support."

24.59(4) *Treatment of amount deducted for child support.* Any amount deducted from unemployment insurance payments for child support obligations shall be treated as if it were paid to the individual as benefits under Iowa Code chapter 96.

24.59(5) *Processing of payments.* The child support recovery unit shall furnish to the department the name and address of the designated public official to whom the amount deducted must be remitted. After the deduction, the remaining balance shall be credited to the claimant.

24.59(6) *Notice to claimant.* The department shall mail a notice to the claimant which explains the beginning date and the amount of the deduction from the claimant's weekly benefit amount which satisfies the individual's child support obligation to the child support recovery unit. This notice will be issued when the first deduction is made from the benefit payment. The notice shall explain the authority for the deduction and include the claimant's right of appeal.

24.59(7) *Appeal rights on the child support deduction.*

a. Any appeal on a child support deduction is limited to either the validity of workforce development's authority to make the deduction or the accuracy of the amount deducted.

b. The claimant will be advised to seek remedy either through the child support recovery unit or through the court system whenever the question of reasonableness or fairness of the deducted amount is raised in terms of ability to pay.

c. The department does not have the authority under Iowa Code chapter 96 to change the amount of the deduction as specified by garnishment or voluntary agreement or to adjudicate any appeal from garnishment or voluntary agreement.

This rule is intended to implement Iowa Code sections 96.3 and 96.20.

871—24.60(96) Alien. Any person who is not a citizen or a national of the United States. A national is defined as a person who lives in mandates or trust territories administered by the United States and owes permanent allegiance to the United States. An alien is a person owing allegiance to another country or government.

24.60(1) Section 3304(a)(14) of the Federal Unemployment Tax Act requires that the state law deny benefits which are based on services performed by an alien who has not been legally admitted to the country as a permanent resident. This provision does not deny benefits on the basis of services performed by noncitizens. It applies to services performed by individuals who do not have legal status of permanent residence in this country.

24.60(2) It is required that information designed to identify illegal nonresident aliens shall be requested of all claimants for benefits. This shall be accomplished by asking each claimant at the time the individual establishes a benefit year whether or not the individual is a citizen.

a. If the response is "yes," no further proof is necessary and the claimant's records are to be marked accordingly.

b. If the answer is “no,” the claimant shall be requested to present documentary proof of legal residency. Any individual who does not show proof of legal residency at the time it is requested shall be disqualified from receiving benefits until such time as the required proof of the individual’s status is brought to the local office. The principal documents showing legal entry for permanent residency are the Form I-94, Arrival and Departure Record, and the Forms I-151 and I-551, Alien Registration Receipt Card. These forms are issued by the U.S. Citizenship and Immigration Services and should be accepted unless the proof is clearly faulty or there are reasons to doubt their authenticity. An individual will be required to provide the individual’s alien registration number at the time of claim filing.

c. Any or all documents presented to the department by an alien shall be subject to verification with the U.S. Citizenship and Immigration Services. The citizenship question shall be included on the initial claim form so that the response will be subject to the provisions of rule 871—25.10(96), prosecution on overpayments.

24.60(3) Disqualification of aliens.

a. Aliens shall be disqualified for services performed unless such alien is an individual who:

- (1) Was lawfully admitted for permanent residence at the time such services were performed or;
- (2) Was lawfully present in this country for purpose of performing such service or;
- (3) Was permanently residing in this country under color of law at the time such services were performed.

b. Color of law permanent residence is defined as:

(1) An alien admitted as a refugee under Section 207 of the Immigration and Nationality Act, 8 U.S.C. 1157, in effect after March 31, 1980;

(2) An alien granted asylum by the attorney general of the United States under Section 208 of the Immigration and Nationality Act, 8 U.S.C. 1158;

(3) An alien granted a parole into the United States for an indefinite period under Section 212(d)(5)(B) of the Immigration and Nationality Act, 8 U.S.C. 1182(d)(5)(B);

(4) Reserved.

(5) An alien who entered the United States prior to June 30, 1948, and who is eligible for lawful permanent residence pursuant to Section 249 of the Immigration and Nationality Act, 8 U.S.C. 1259; or

(6) An alien who has been formally granted deferred action or nonpriority status by the U.S. Citizenship and Immigration Services.

24.60(4) Certain nonimmigrants may perform service in this country. All nonimmigrant aliens 18 years and older are required by law to carry alien registration card Form I-94. The immigration and naturalization service places a symbol on the Form I-94 which indicates eligibility to perform service in this country.

a. Nonimmigrant aliens who are allowed to perform certain types of service are:

Class of worker	Symbol on I-94	Employment Permitted
(1) Ambassador, Consular officers and their immediate families	A-1	May accept employment with permission from the Department of State and the Immigration Service. I-94 will be stamped: "Employment Authorized."
(2) Other foreign government officials and their immediate families.	A-2	Same as for A-1.
(3) Treaty trader, spouse and children Treaty investor, spouse and children	E-1 E-2	Admitted to work for a specific employer or as a sole proprietorship or partnership.
(4) Student	F-1 M-1	May accept employment of up to 20 hours per week with permission from the Immigration Service. I-94 will be stamped: "Employment Authorized." Employment should not displace a USC or permanent resident alien.
(5) Representatives of foreign governments to international organization such as the U.N.	G-1 G-2 G-3 G-4 G-5	May accept employment if approved by the Department of State and the Immigration Service. I-94 will be stamped: "Employment Authorized."
(6) Temporary worker of distinguished merit and ability	H-1	Are admitted to work on a petition of an employer. Can only work for that employer unless permission is granted by the Immigration Service to change employers.
(7) Temporary workers performing services unavailable in the U.S.	H-2	Same as for H-1.
(8) Trainee	H-3	Same as for H-1.
(9) Exchange visitor Spouse and children	J-1 J-2	May be admitted to work in a specific program or may be granted permission to work after entry. I-94 will be stamped: "Employment Authorized."
(10) Fiancé or fiancée of USC entering solely to conclude valid marriage Child of a K-1	K-1 K-2	May accept employment upon approval of the Immigration Service. I-94 will be stamped: "Employment Authorized."
(11) Intra company transferee entering to continue employment with same employer. Dependents.	L-1 L-2	Admitted upon petition by an employer. May only work for that employer. May accept employment if approved by the Immigration Service. I-94 will be stamped: "Employment Authorized."
(12) NATO representatives	NATO-1 NATO-2 NATO-3 NATO-4 NATO-5 NATO-6 NATO-7	Dependents may accept employment with approval of the Immigration Service. I-94 will be stamped: "Employment Authorized."

b. Immigrant aliens who are not allowed to perform services are:

Class of worker	Symbol on I-94	Employment Status
(1) Attendant, servant or personal employee of an A-1 or A-2	A-3	May not accept employment.
(2) Temporary visitor for business	B-1	May not accept employment.
(3) Temporary visitor for pleasure	B-2	May not accept employment.
(4) Alien in transit	C-1 C-2 C-3	May not accept employment.
(5) Transit without a visa	TRWOV	May not accept employment.
(6) Seaman	D-1 D-2	May not accept employment.
(7) Dependent of student	F-2 M-2	May not accept employment.
(8) Spouse or child of an H-1, H-2 or H-3	H-4	May not accept employment.
(9) Representative of foreign information media including spouse and children	I	May not accept employment.

This rule is intended to implement Iowa Code section 96.5(10).

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¹ See rule 345—4.50(96)

² Effective date of 24.26(14) and 24.26(15) delayed 70 days by the Administrative Rules Review Committee at its meeting held March 8, 1999.

CHAPTER 25
BENEFIT PAYMENT CONTROL
[Prior to 9/24/86, Employment Security[370]]
[Prior to 3/12/97, Job Service Division [345] Ch 5]

871—25.1(96) Definitions.

“*Administrative penalty*” means the disqualification of a claimant from the receipt of benefits due to fraud or misrepresentation or the willful and knowing failure to disclose a material fact for a period of not more than the remaining benefit year, including the week in which such determination is made.

“*Allegation of fraud*” means any form of communication from a party which implies fraudulent activity.

“*Anonymous tip*” means information about suspected fraudulent activity received from a party who wishes to remain unidentified.

“*Appeals*” means a request for a review by an appeals authority of the department from any determination made by a representative of the department, and including any request for a review by a higher appeals authority of a decision made by a lower appeals authority. It also includes any appeal from a determination of a representative, or any appeal or request for a hearing by a properly affected party.

“*Benefits*” means money payments to an individual with respect to unemployment. See 871—subrule 24.1(18).

“*Claim*” means a request for benefit payment. See 871—subrule 24.1(25).

“*Claimant.*” See 871—subrule 24.1(26).

“*Earnings*” means the remuneration for services performed.

“*Employing unit*” means any individual or entity which engages the services of one or more individuals; one for whom employees work and who pays their wages or remuneration.

“*Evidence*” means any witnesses’ testimony, records, documents, copies of documents, statements, demonstrations, or any other relevant testimony or concrete objects before the department or at an employment appeal hearing or trial of an issue for the purpose of inducing belief in the minds of the hearing officer, department, court or jury as to the truth of a contention.

“*Fact-finding interview*” means a discussion between a claimant or an employer and an investigator for the purpose of obtaining from the claimant or employer a statement containing information on a specific eligibility or disqualification issue.

“*Fraud*” means the intentional misuse of facts or truth to obtain or increase unemployment insurance benefits for oneself or another or to avoid the verification and payment of employment security taxes; a false representation of a matter of fact, whether by statement or by conduct, by false or misleading statements or allegations; or by the concealment or failure to disclose that which should have been disclosed, which deceives and is intended to deceive another so that they, or the department, shall not act upon it to their, or its, legal injury.

“*Fraudulent activity*” means actions based on or in the spirit of fraud.

“*Initial determination*” means the first determination with respect to a claim or a request for determination of insured status.

“*Intent*” means the design, resolve, or determination with which an individual or group of individuals acts in order to reach a preconceived objective.

“*Investigator*” means investigation and recovery section investigator.

“*Local office*” means the workforce development center office in which claims functions are performed.

“*Material fact*” means a fact which necessarily has some bearing on the subject matter, such as is necessary to determine the issue.

“*Misconduct.*” See 871—subrule 24.32(1), paragraph “a,” and 871—subrule 24.32(3).

“*Misrepresentation*” means to give misleading or deceiving information to or omit material information; to present or represent in a manner at odds with the truth.

“Month” means the time beginning with any day of one month to the corresponding day of the next month, or if there is no corresponding day, then through the last day of the next month.

“Overpayment” means the amount of unemployment insurance benefits erroneously paid to a claimant due to error, misrepresentation, or fraud.

“Social security account number.” See 871—subrule 24.1(115).

“Surveillance” means the observance of activities.

“Wage cross match audit” means the computerized quarterly cross match of benefits received by Iowa claimants and wages reported by employers to the state of Iowa.

“Wages” means the same as earnings. See rules 871—24.13(96) and 871—24.16(96).

a. When a money value for board or lodging, or both, furnished a worker is agreed upon in a contract of hire, the amount so agreed upon, if more than the rates determined by the department or the rates prescribed herein, shall be deemed the cash value of the board and lodging.

b. Cash value of room and board.

(1) If board, rent, housing, lodging, meals, or similar advantage is extended in any medium other than cash as partial or entire remuneration for service constituting employment as defined in the Act (Iowa Code chapter 96), the reasonable cash value of same shall be deemed wages.

(2) Where the cash value for such board, rent, housing, lodging, meals, or similar advantage is agreed upon in any contract of hire, the amount so agreed upon shall be deemed the value of such board, rent, housing, lodging, meals, or similar advantage. Check stubs, pay envelopes, contracts, and the like, furnished to employees setting forth such cash value, are acceptable evidence as to the amount of the cash value agreed upon in any contract of hire except as provided in subparagraphs (4) and (5) of this paragraph.

(3) In the absence of an agreement in a contract of hire, the rate for board, rent, housing, lodging, meals, or similar advantage, furnished in addition to money wages or wholly comprising the wages of an employed individual, shall be deemed to have not less than the following cash value except as provided in subparagraph (4) of this paragraph.

Full board and room per week	\$300.00
Meals (without lodging) per week	100.00
Meals (without lodging) per day	20.20
Lodging (without meals) per week	198.00
Lodging (without meals) per day	40.00
Individual meals:	
Breakfast	4.50
Lunch	5.30
Dinner	10.50
A meal not identifiable as either breakfast, lunch, or dinner	4.50

(4) The department or its authorized representative may, after affording reasonable opportunity at a hearing for the submission of relevant information in writing or in person, determine the reasonable cash value of such board, rent, housing, lodging, meals, or similar advantage in particular instances or group of instances, if it is determined that the values fixed in or arrived at in accordance with subparagraph (3) of this paragraph, or in the contract of hire do not properly reflect the reasonable cash value of such remuneration.

“Week.” See 871—subrule 24.1(135).

This rule is intended to implement Iowa Code chapter 96 and sections 96.3(3), 96.3(5), 96.19(38), 96.19(12), and 96.19(20).

[ARC 3247C, IAB 8/2/17, effective 9/6/17; ARC 3402C, IAB 10/11/17, effective 11/15/17]

871—25.2(96) Policy of the investigation and recovery unit.

25.2(1) The policy of the investigation and recovery unit is to take aggressive action to prevent, detect, and deter benefits paid through error by the agency or through willful misrepresentation or error by the claimant or others and investigate and penalize fraudulent actions on the part of claimants and employing units.

25.2(2) It shall be the policy of the investigation and recovery unit to maximize the recoupment of overpayments from those claimants who have received benefits to which they were not entitled. It shall also be the policy of the unit to seek prosecution of persons whom the unit believes have committed serious violations of the employment security law of Iowa.

This rule is intended to implement Iowa Code sections 96.11(1), 96.16, and 96.17(2).
[ARC 3812C, IAB 5/23/18, effective 6/27/18]

871—25.3(96) Functions of the investigation and recovery unit. The function of the investigation and recovery unit is to:

25.3(1) Investigate and make determinations on issues within the scope of the investigation and recovery unit which are referred by the general public, employing units, agency personnel, other agencies, and anonymous sources. The unit shall examine allegations of the following type:

a. Failure to report earnings while receiving unemployment insurance benefits.

b. Collusion between claimant and employer or between two or more claimants, in the fraudulent obtaining of benefits.

c. The use of multiple identities and social security numbers to obtain unemployment insurance benefits.

d. Forgery and fraudulent certification for unemployment insurance benefits by one person impersonating another.

e. Corporations, partnerships, individual proprietorships, and other employing units which fraudulently evade unemployment insurance coverage and tax assessment. Determine status of claimants employed by these entities.

f. Claims involving contrived or fictitious employment, (i.e., family relationships).

g. Cases of possible concurrency in claiming workers' compensation, railroad retirement, or social security while receiving benefits. Also concurrency of claiming benefits outside of Iowa while receiving unemployment insurance benefits. Possible welfare concurrency will be referred to the appropriate agency.

h. Issues of availability, capability, voluntary leaving of employment, refusal of employment, misconduct, intervening employment, and industrial controversy where the facts are complex and field work is necessary to establish proper findings.

i. Validity of alien registration numbers through a cross-check with U.S. Citizenship and Immigration Services. If an alien has falsely claimed to be a U.S. citizen or used a false alien registration card in order to receive benefits, prosecution cases will be prepared when appropriate. Refer to rule 871—24.60(96) for the definition of alien.

25.3(2) Collect refunds of overpayments resulting from determinations of claimant fraud.

25.3(3) Prepare all cases for prosecution.

a. Submit cases to the county attorneys.

b. Assist county attorneys and others by presenting evidence and giving testimony in court proceedings.

25.3(4) Formulate methods and procedures to prevent and detect all types of fraud by claimants, employing units, and unemployment insurance services personnel.

25.3(5) Provide liaison with local, state, and federal law enforcement agencies.

25.3(6) Testify and produce evidence before hearing officers and employment appeal board hearings regarding fraudulent activities.

25.3(7) Conduct internal audits as established by federal guidelines.

This rule is intended to implement Iowa Code sections 96.11(1), 96.16, and 96.17(2).
[ARC 3247C, IAB 8/2/17, effective 9/6/17; ARC 3812C, IAB 5/23/18, effective 6/27/18]

871—25.4(96) Allegation of claimant fraud. The procedure to be followed where an allegation of claimant fraud has been made is:

25.4(1) Upon receipt of an allegation of claimant fraud, if the alleging party supplies sufficient information to proceed with an investigation, the alleging party shall be advised that the investigation and recovery unit will make a full investigation of the allegation. The alleging party will be advised of

the unit's findings, if such investigation could affect the employer account of the alleging party or affect a claim for benefits of the alleging party.

25.4(2) The allegations will be promptly forwarded to the investigation and recovery unit for investigation.

25.4(3) If the findings revealed through the investigation by the investigation and recovery unit indicate that a disqualification would have resulted for the period benefits were paid, an informal fact-finding interview shall be scheduled to allow the party making the allegation and the claimant an opportunity to give testimony. The investigation and recovery unit will determine if separate fact-finding interviews are necessary for the claimant and party making the allegations and any other party with pertinent information.

25.4(4) If the claimant or any other party with pertinent information wishes to invoke the fifth amendment right to remain silent, the investigator can require the claimant or any other party with pertinent information to answer all questions or produce any pertinent documents. However, the claimant or any other party with pertinent information cannot be prosecuted on the basis of any transaction, matter, or thing concerning which the claimant or any other party with pertinent information is compelled, after having claimed the privilege against self-incrimination, to testify or produce evidence.

25.4(5) In the event a local office receives an allegation by anonymous communication, the office will forward such information to the investigation and recovery unit.

This rule is intended to implement Iowa Code sections 96.16 and 96.11(10).
[ARC 3812C, IAB 5/23/18, effective 6/27/18]

871—25.5(96) Allegation of employing unit fraud. The following is the general procedure to be followed by the investigation and recovery unit in an employing unit fraud investigation:

25.5(1) Upon receipt of an allegation of employing unit fraud the party making the allegation will provide sufficient information to proceed with an investigation. Information such as the identification and location of the employing unit, the individual or group of individuals suspected of fraudulent action, and what fraudulent action is occurring will be provided, if possible.

25.5(2) The allegation will be promptly forwarded to the investigation and recovery unit for investigation.

25.5(3) The investigation and recovery unit may seek the assistance and expertise of the tax unit staff.

25.5(4) If the findings, revealed through the investigation by the investigation and recovery unit, indicate that misrepresentation occurred on the part of the employer, an informal fact-finding interview will be scheduled for the party or parties to allow them an opportunity to present testimony either refuting or affirming the allegation of employer fraud.

25.5(5) If the employer wishes to invoke the fifth amendment, the investigator can require the employer to answer all questions. However, the employer cannot be prosecuted on the basis of any transaction, matter, or issue concerning which such employer is compelled, after having invoked the privilege against self-incrimination, to testify or produce evidence.

25.5(6) In the event a workforce development office receives an allegation, the office will forward such information to the investigation and recovery unit, provided the communication identifies and supplies sufficient information to proceed with an investigation.

This rule is intended to implement Iowa Code sections 96.16 and 96.11(10).
[ARC 3247C, IAB 8/2/17, effective 9/6/17; ARC 3812C, IAB 5/23/18, effective 6/27/18]

871—25.6(96) Investigation of fraud (procedure).

25.6(1) Upon receipt of an allegation of fraudulent activity, an investigation file will be prepared containing all necessary documents. A case number will be assigned and the case assigned to an investigator. All investigation files will remain confidential.

25.6(2) The investigator will make a thorough review of all documents contained within the file and determine what issues need to be investigated. Documented evidence will be obtained from claimants,

employing units, witnesses, law enforcement agencies, local, state, and federal agencies, and any other source as may be necessary.

25.6(3) The investigation shall include the gathering of pertinent evidence and statements regarding any suspected fraudulent activity.

25.6(4) An investigator shall have the authority to request all pertinent books, papers, correspondence, memoranda, and other records necessary in the investigation of any error or potential fraudulent activity committed by a claimant, employing unit, or other party. Likewise, testimony may be taken from any person who has relevant information or records concerning the matter or events under investigation. Any person, when requested by an investigator to produce records or give testimony, must be available personally to give testimony to or to produce records within a reasonable time for the investigator. If any person does not comply with the investigator's request to give testimony to the department or produce records, a subpoena may be issued summoning the individual to appear before the investigator to give testimony or present the records.

If the investigator determines that any request for the voluntary production of pertinent records might endanger the existence of such records, the investigation and recovery unit may immediately issue a subpoena duces tecum which orders an individual to produce some document or paper that is pertinent to a pending investigation by the investigation and recovery unit, in order to secure the production of such records.

25.6(5) The investigation and recovery unit may seek the assistance and expertise of the field auditors.

25.6(6) Surveillance of an individual or location may be conducted by the investigator when that individual or location is pertinent to the investigation.

25.6(7) Upon completion of the investigation, a determination shall be made as to whether or not fraudulent activity has occurred. If there is fraudulent activity, appropriate corrective action shall be initiated and the alleging party shall be advised of the investigation and recovery unit's findings, if such investigation could affect the employer account of the alleging party. The case may be prepared for prosecution if prosecution is warranted.

25.6(8) A detailed report will be entered in the case management system upon completion.

This rule is intended to implement Iowa Code sections 96.16, 96.11(6) and 96.11(7).
[ARC 3812C, IAB 5/23/18, effective 6/27/18]

871—25.7(96) Determination of overpayment by reason of claimant's fault or fraud.

25.7(1) Determination by reason of the claimant's own fault, employer's fault, agency fault, or fraud as provided in Iowa Code section 96.16, that the claimant has received benefits to which such claimant was not entitled shall be made by the investigation and recovery unit on the basis of such facts as it may obtain.

25.7(2) A notice of such determination shall be promptly given to the affected claimant. Such notice shall be dated and shall advise the claimant as to the benefit weeks involved and shall advise the claimant as to the reason for overpayment and the total amount of said overpayment. Unless the claimant, within ten days after such notification was mailed to the claimant's last-known address, files with the department a written request for review of, or an appeal from, such determination, the determination shall be final. Timeliness shall be determined by postmark within ten calendar days from the date of mailing shown on the decision or be received by the department within ten calendar days from the date of mailing.

25.7(3) Upon receiving a written request for review, the investigation and recovery unit, based upon such facts as it has or may acquire, may affirm, modify, or reverse the prior decision or refer the matter to an administrative law judge. The claimant shall be promptly notified of such decision or referral. Unless the claimant files an appeal within ten calendar days after the date of mailing, such decision shall be final. Timeliness shall be determined by postmark within ten calendar days from the date of mailing shown on the decision or be received by the department within ten calendar days from the date of mailing.

25.7(4) The claimant may directly appeal the decision of the investigation and recovery unit without a request for review, in which case the appeal will be referred directly to the appeals section of the department.

25.7(5) Claimants affected by determinations made in accordance with this rule shall have the same rights to further appeal as are provided in Iowa Code section 96.6.

25.7(6) When such determination has become final the benefits shall be recovered.

a. The department shall always demand immediate repayment of the overpayment as its first option for those claimants not in benefit claiming status at the time of the initial overpayment determination. If not paid immediately, the overpayment amount will be deducted from future benefits. Recovery of overpayments due to misrepresentation or fraud may also include the filing of a notice of lien or other civil action. Upon finalization of the determination of overpayment by reason of a claimant's fault or fraud, interest shall accrue at a rate of 1/30th of 1 percent per day until the overpayment is paid in full.

b. The department shall mail a first statement of overpayment to the claimant's last-known address. This statement will request full repayment to the department.

c. If a claimant fails to respond to the first statement of overpayment, a second statement shall be sent 30 days later. The second statement notifies the claimant that full repayment must be made. If the claimant cannot make full repayment, the department will consider a monthly repayment agreement. Monthly amounts based on the minimum repayment agreement schedule below will be printed on the second billing. The first repayment is expected 10 days from the date of the second repayment statement and the additional repayments every 30 days thereafter until the debt is paid in full. The department reserves the right to accept or reject any proposed repayment agreement. The following minimum repayment agreement is acceptable to the department.

Amount of Original Overpayment	Minimum Monthly Payments	Number of Months Required to Liquidate the Overpayment
Under \$199	\$ 25	1 to 8
\$200 to \$399	\$ 50	4 to 8
\$400 to \$599	\$ 75	5 to 8
\$600 to \$799	\$ 90	6 to 9
\$800 to \$999	\$ 100	8 to 10
\$1000 to \$1499	\$ 150	6 to 10
\$1500 to \$1999	\$ 200	7 to 10
\$2000 to \$2999	\$ 250	8 to 12
\$3000 and over	\$ 300	10 to —

d. If a claimant fails to respond to the second repayment statement a third notice shall be sent in approximately 30 days. The department has the option to send a notice which allows the claimant another 10 days to make full repayment of the indebtedness or a partial payment with an acceptable signed repayment agreement to prevent further collection action by the department, or the department may send a lien warning letter as the third billing notice. This warning gives 10 days to make full payment which will prevent lien filing. The department may proceed with any appropriate civil action to collect the debt which would include, but not be limited to, a judgment in a court having jurisdiction over the matter. The same type of action may be pursued by the department in those cases where a claimant defaults on a repayment schedule.

e. If the department receives a cash repayment to liquidate all or part of an indebtedness the department shall issue a receipt and mail it to the claimant's last-known address. If the department receives a repayment that is not identified by a social security number, name or other means of identification, the money shall be retained until such time as a positive identification can be made and proper credit given to the claimant.

f. An overpayment to the claimant will cause the employer to be relieved of charges except when the overpayment is a result of payment of a back pay award.

g. Reserved.

h. An underpayment of \$5 or less will not be set up and paid to an individual unless the individual requests the payment in writing.

This rule is intended to implement Iowa Code sections 96.3(3), 96.3(7), 96.4(3), 96.5(1), 96.5(3), 96.6(1), 96.8(5), 96.11(1), 96.16, and 96.19(38).

[ARC 3247C, IAB 8/2/17, effective 9/6/17; ARC 3248C, IAB 8/2/17, effective 9/6/17; ARC 3812C, IAB 5/23/18, effective 6/27/18; ARC 3813C, IAB 5/23/18, effective 6/27/18]

871—25.8(96) Recovery of benefit overpayments when benefits are erroneously received.

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 is 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. The department shall mail the overpayment decision to the claimant's last-known address. 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. The department shall mail a first statement of overpayment to the claimant's last-known address. This statement will request full repayment in the form of a negotiable check, money order, or bank draft payable to the Department of Workforce Development.

b. If a claimant fails to respond to the first statement of overpayment a second statement shall be sent 30 days later. The second statement notifies the claimant that full repayment must be made. If the claimant cannot make full repayment the department will consider a monthly repayment agreement.

c. Rescinded IAB 10/15/03, effective 11/19/03.

d. If an individual has acted in good faith and is without fault in claiming federal unemployment compensation under any of the following programs:

- (1) Unemployment Compensation Federal Employees (UCFE)
- (2) Unemployment Compensation Ex-servicemembers (UCX)
- (3) Trade Readjustment Allowances (TRA)
- (4) Disaster Unemployment Assistance (DUA)

and it is subsequently determined that the individual is not entitled to the benefits, the department shall have the right to recover the benefits in accordance with the procedure outlined in subrule 25.8(1). Any federal unemployment compensation overpayments recovered shall be credited to the appropriate account of the United States. Three years after the instance of the federal unemployment compensation overpayment, if the department concludes that continued collection efforts would result in diminishing returns, then the unrecovered amount will be removed from the department accounting records. An administrative record will be maintained for possible collection through offset or other appropriate method. If no collection action has taken place during the three years after the department has removed the overpayment from its accounting records, then the overpayment will be disposed of.

Any overpayment of Trade Readjustment Allowances or Trade Adjustment Assistance or Disaster Unemployment Assistance will be offset at the rate of 50 percent of the benefit amount otherwise payable to the individual for unemployment insurance, extended benefits or any other federal unemployment compensation program.

25.8(2) *Misrepresentation.*

a. Whenever it is found that a claimant has received benefits through misrepresentation and has been assessed with an overpayment, no further benefits shall be paid to such claimant until the total amount of the overpayment has been reimbursed or otherwise liquidated to the satisfaction of the department.

b. The claimant may make refund of an overpayment by cash or by means of an offset against future benefit payments, at the discretion of the department.

(1) If the department seeks to recover the amount of the benefits, the department may file a lien with the county recorder for the amount of the overpayment against the property and rights to property, whether real or personal, belonging to the individual.

(2) The department may attempt to collect the overpayment in the manner provided in Iowa Code section 96.14(3).

c. Any benefits which may become due an individual against whom a fraudulent overpayment is outstanding may be used to reduce the amount of the fraudulent overpayment. The employer's account will be noncharged for overpayments caused by fraud or misrepresentation.

d. If it is found that an individual has received benefits through misrepresentation and has been assessed with an overpayment under any of the following programs:

(1) Unemployment Compensation Federal Employees (UCFE)

(2) Unemployment Compensation Ex-service members (UCX) and criminal charges are not involved, the department will limit deduction from future benefits to a two-year period following the original determination of overpayment. If an individual is convicted for fraud, the department shall have the right to recover any resulting overpayment in accordance with the procedure outlined in subrule 25.8(2).

25.8(3) *Purging uncollectible overpayments.* On the last working day of each calendar month, the department reviews all outstanding overpayments which are ten years or older from the date of the overpayment decision and determines as uncollectible and purges from its records the unpaid balances of overpayments which are ten years or older.

This rule is intended to implement Iowa Code sections 96.7(2), 96.11(1), 96.11(11), 96.11(13), 96.14(3), 96.16, 96.20, and 96.29.

[ARC 3247C, IAB 8/2/17, effective 9/6/17; ARC 3303C, IAB 8/30/17, effective 10/4/17]

871—25.9(96) Administrative penalties.

25.9(1) When, subsequent to the filing of a valid claim, it has been determined that within the preceding 36 calendar months the claimant fraudulently reported or failed to report wages earned during a week, or failed to disclose a material fact upon separation from employment from such claimant's most recent employing unit or employer, with intent to obtain benefits, or failed to disclose a material fact concerning any claimant's ability to work, availability for work, or any other eligibility requirements, with intent to obtain benefits, such claimant shall forfeit all unemployment insurance benefits for the week in which the determination is made and for a period of not more than such claimant's remaining benefit year.

25.9(2) Penalties.

a. Any penalties imposed by this rule shall be in addition to those imposed by Iowa Code section 96.16.

b. The general guide for disqualifications for deliberate falsification for the purpose of obtaining or increasing unemployment insurance benefits is listed below. It is intended to be used as a guide only and is not a substitute for the personal subjective judgment of the investigator because each case must be decided on its own merits. The administrative penalty recommended for falsification ranges from three weeks through the end of the benefit year. The department shall also consider the filing of fraud charges whenever an administrative penalty is imposed against a claimant. If the same offense is repeated, loss of benefits through the end of the benefit year will result.

c. The department shall issue a determination which sets forth the specific penalty being applied.

(1) The degree and severity of penalty shall be determined at the discretion of the investigator and shall be based upon the nature of the offense and the facts.

(2) The determination shall be based on the facts obtained and shall become final within ten days after the decision was mailed to the claimant's last-known address, unless an appeal is made to the department by the filing of a notice of appeal at any office of the department of workforce development. Timeliness shall be determined by postmark within ten calendar days from the date of mailing shown on the decision or be received by the department within ten calendar days from the date of mailing.

25.9(3) Sources of information concerning the application of an administrative penalty shall be the same as those pertaining to fraud and overpayment, namely:

a. Employer report of wages, with comparative analysis of them with concurrent benefit payments.

b. Local office obtaining late reports by claimant of deductible income items or potentially disqualifying circumstances.

c. Tips and leads from other sources of claimant being employed while claiming benefits or that such claimant did not otherwise meet the eligibility requirements.

d. Cross-checking of information on death tapes from the vital statistics section, division of administration, department of public health.

e. Review of claims using social security numbers not issued by the social security administration.

f. Cross-checking of information from the Iowa centralized employer registry.

g. Cross-checking of information with the National Directory of New Hires.

h. Cross-checking of information on incarcerated individuals from the Iowa department of corrections.

i. Cross-checking of information with fraud detection tools identified by the department.

25.9(4) The claimant shall be notified of the possible application of the administrative penalty by Form 65-5315, Notice of Unemployment Insurance Fact-Finding Interview, in the same manner a claimant is notified of a possible overpayment.

25.9(5) If the claimant wishes to invoke the right to remain silent, the investigator can require the claimant to answer all pertinent questions. However, the claimant cannot be prosecuted on the basis of any transaction, matter, or event concerning which the claimant is compelled to testify or produce evidence after the individual has claimed the privilege against self-incrimination.

25.9(6) The claimant shall be afforded an opportunity to give testimony, either refuting or affirming the allegation of intent to defraud and may be represented by legal counsel at such hearing.

25.9(7) Rescinded IAB 10/15/03, effective 11/19/03.

25.9(8) In the event any claimant is aggrieved by the representative's determination assessing an administrative penalty or by the severity of the penalty assessed, such claimant shall have the same protest and appeal rights as provided for all other determinations involving a denial of benefits.

25.9(9) A criminal conviction of a claimant for fraud or an order of the court requiring restitution for the amount of the overpayment shall not preclude the investigation and recovery unit from also imposing an administrative penalty denying further benefits to the claimant for a period of time not to exceed the remainder of said claimant's benefit year and including the week in which such determination is made by the investigation and recovery unit.

This rule is intended to implement Iowa Code sections 96.5(8), 96.11(1), and 96.11(10).
[ARC 3812C, IAB 5/23/18, effective 6/27/18]

871—25.10(96) Prosecution on overpayments.

25.10(1) When an overpayment occurs due to misrepresentation, the case shall be given a thorough and detailed review of the facts, as obtained by the investigation and recovery unit, to determine if a prosecution for fraud would meet the county attorney's criteria.

a. The claimant shall be afforded an opportunity to give testimony either refuting or affirming the overpayment.

b. The investigation and recovery unit will issue a decision concerning the overpayment.

25.10(2) Restitution or the establishment of a repayment plan of an amount overpaid to a claimant due to fraudulent misrepresentation or failure to disclose a material fact shall not preclude the investigation and recovery unit from instituting criminal proceedings against the claimant.

This rule is intended to implement Iowa Code sections 96.11(1) and 96.16(2).
[ARC 3812C, IAB 5/23/18, effective 6/27/18]

871—25.11(96) Prosecution for fraud (procedure).

25.11(1) If prosecution is warranted, supportive documentation and evidence will be requested and thoroughly reviewed upon receipt by the investigator.

25.11(2) A handwriting sample will be taken from claimant when necessary and submitted for investigation.

25.11(3) A summary of the case will be prepared and the case taken to the county attorney for filing of criminal charges.

25.11(4) Upon request by the county attorney, the investigator may make recommendations regarding plea bargaining, dismissals, and sentencing and participate in the mediation process.

25.11(5) Investigators may testify and produce evidence at district court and grand jury proceedings. This rule is intended to implement Iowa Code sections 96.11(1) and 96.16(2).

871—25.12(96) Wage verification procedure.

25.12(1) Each quarter, wage verification documents are mailed to selected employers requesting wage information on specific claimants as it concerns benefit payments.

25.12(2) The documents, upon completion by the employer, are sent to the investigation and recovery unit for review. Potential cases of conflict will result in an investigation assignment. Claimants will be notified by means of Form 65-5332, Preliminary Audit Notice, and given an opportunity to respond. If it is determined that an overpayment has occurred, the investigator will prepare Form 68-0031, Decision Overpayment Worksheet, on which the amount, weeks, type, and reason for the overpayment are identified. Claimants are notified of the determination on Form 65-5323, Unemployment Insurance Decision.

25.12(3) An employer may choose to participate in the automated wage verification procedure by following the electronic submission guidelines.

25.12(4) An employer that fails to respond to a request for wage information pertaining to specific claimant(s) as such request pertains to benefit payments will be charged a fee of \$25 per claimant.

This rule is intended to implement Iowa Code section 96.11(1).

[ARC 3248C, IAB 8/2/17, effective 9/6/17; ARC 3812C, IAB 5/23/18, effective 6/27/18]

871—25.13(96) Duplicate benefit warrants.

25.13(1) *Undelivered warrant.* If any warrant issued in payment of benefits is returned undelivered to the department by the postmaster, such warrant will be canceled 90 days after the original issue date unless it can be mailed to the new correct address. If a warrant remains outstanding beyond a period of six months from the date of issuance after the end of the quarter in which the warrant was issued, this warrant will be canceled when the department receives notification from the state comptroller's office.

25.13(2) *Canceled warrant.* On a quarterly basis, the comptroller shall cause to be canceled each benefit warrant which, at this time, has been outstanding six months or longer. Any individual who has an outdated warrant less than five years old may contact the department for assistance. The individual will be instructed to return the outdated warrant to the unemployment insurance service center with a request that a duplicate warrant be issued. If the outdated warrant is more than five years old, miscellaneous claim Form 60-0224 should be used to request reissuance of the warrant. The miscellaneous claim form shall be transmitted to the state board of appeals for determination, at its regular monthly meeting, as to payment or nonpayment of the warrant.

25.13(3) *Lost and uncashed warrant.*

a. In the event that a warrant issued in payment of benefits is lost, stolen, mutilated, destroyed, or canceled under conditions cited in subrules 25.13(1) and 25.13(2), the payee shall contact the department representative for assistance. All information will be forwarded to the unemployment insurance service center.

b. The department will ascertain whether the warrant has been cashed and take the following action:

(1) If the warrant has been cashed, the procedure in subrule 25.13(4) of this rule shall be followed.

(2) If the warrant has not been cashed, the department shall issue a stop payment order on the warrant, and a Form 68-0163, Affidavit and Agreement for Issuance of Duplicate Warrant, will be mailed to the individual for completion. The affidavit is a sworn statement that the original warrant was not received and that the warrant will be surrendered voluntarily if received by the claimant. The claimant should be warned that the warrant cannot be cashed after the stop payment order is in effect.

c. The affidavit shall be personally prepared in duplicate by the claimant, and the claimant's signature on the affidavit must be notarized. The affidavit shall be transmitted in duplicate to the unemployment insurance service center.

d. The department will then request that the state comptroller reissue a duplicate warrant, and this warrant will be mailed to the claimant by the department.

e. If the claimant should cash the original warrant after the stop payment order is in place, an overpayment shall be set up and possible prosecution considered, if warranted.

f. If the claimant should find the original warrant after the duplicate warrant has been issued, the original warrant shall be sent to the unemployment insurance service center.

25.13(4) Forged warrants.

a. In the event that the original warrant has been endorsed by and paid to someone allegedly not authorized to receive payment, the payee whose endorsement was forged will be given the opportunity to examine the endorsement on the copy of the warrant.

b. If the payee determines that the endorsement is a forgery, the following action shall be taken:

(1) The Form 68-0320, affidavit as to forged endorsement, shall be personally prepared in duplicate by the claimant and the claimant's signature on the affidavit must be notarized.

(2) The claimant shall be required to file a police report with the local law enforcement agency and return a copy of the police report to the unemployment insurance service center.

(3) A copy of the original warrant, the notarized affidavit and the copy of the police report will be sent to the unemployment insurance service center for action. The department will explain to the claimant that the documents will be reviewed and that a handwriting analysis may be completed.

c. The investigation and recovery bureau will make a handwriting analysis to determine if the warrant was forged. If the handwriting is determined to be a forgery, a duplicate warrant will be issued to the payee only after the state comptroller has recouped the money.

25.13(5) Employer account credit. At the time of cancellation of any outstanding benefit warrant(s), the employer account shall be credited with the amount of the warrant(s) so canceled. The reissuance of any benefit warrant canceled in subrule 25.13(1) or 25.13(2) shall be charged to the employer account.

This rule is intended to implement 1986 Iowa Acts, chapter 1245, sections 901 through 942.

871—25.14(96) Payments of benefits due deceased person.

25.14(1) Benefits due deceased claimants. An eligible week for a deceased claimant will be one where the week is claimed by the individual prior to death. If benefits are due a deceased person, the benefits shall be paid to the person or persons who have been issued letters testamentary or of administration pursuant to an application filed within 30 days after the claimant's death.

25.14(2) In the event that no application for letters testamentary or of administration has been filed within 30 days after the claimant's death, the benefits which were due shall be paid to the decedent's surviving spouse, if any; or, if no spouse survives the decedent and the decedent is survived by an unmarried minor child or children, the benefits shall, at the discretion of the department, be paid:

a. To the guardian or guardians of unmarried minor child or children for their benefit; or

b. To the person or institution who or which the department finds shall have assumed the obligation of providing support for or maintenance of such minor child or children; or

c. To any person who the department finds has furnished to such child or children necessities of a value equaling or exceeding the amount of benefits; or

d. To any person who the department finds has paid expenses of the claimant's last illness or burial expenses in an amount equaling or exceeding the amount of benefits.

25.14(3) The comptroller shall cause any unredeemed warrant or warrants payable to a deceased person to be surrendered and voided and shall issue a new warrant or warrants bearing the same dates and numbers and made payable to the entitled person or persons under the provisions of this rule. The issuance of the new warrant or warrants shall fully discharge the department of its obligation in respect to the claims covered thereby and no other person shall claim or assert any right to them.

25.14(4) Any person claiming entitlement to the payment of benefits under this regulation shall present said claim in writing within 60 days after the death of the claimant and shall offer proof thereof in such form as the department may require; however, the department may, upon good cause shown, extend the time for presentation of said claim. In the event no claim is made for the payment of such

benefits within the time limit specified above or any extension thereof, the benefits shall not be paid but shall remain in the unemployment compensation fund.

This rule is intended to implement 1986 Iowa Acts, chapter 1245, sections 901 through 942.

871—25.15(96) Back pay—benefit recovery and charging.

25.15(1) When an individual receives benefits for a period of unemployment and subsequently receives a payment in the form of or in lieu of back pay for the same period from the individual's employer, the department shall recover the benefits in the following manner:

a. The department shall first attempt to reach an agreement with the individual and the employer to allow the employer to deduct an amount equal to the benefits received by the individual from the payment in the form of or in lieu of back pay paid by the employer and to remit that amount to the unemployment compensation fund.

b. If the department fails to reach an agreement with the individual and the employer as provided in paragraph "a," then the department shall either deduct an amount equal to the benefits received by the individual from any future benefits received by the individual or have the individual pay the department an amount equal to the benefits received by the individual.

c. The burden of proof shall rest with the employer to establish the dollar amount of the back pay award which is remuneration for lost wages and the specific period of time to which the remuneration applies.

25.15(2) If the department reaches an agreement with the individual and the employer to allow the employer to deduct an amount equal to the benefits received by the individual from the payment in the form of or in lieu of back pay paid by the employer, then the employer's account shall be relieved of benefit charges in an amount equal to the amount remitted by the employer to the unemployment compensation fund; however, if the department fails to reach an agreement, then the benefit charges shall not be relieved until the benefits paid to the individual are recovered either by deducting that amount from any future benefits received by the individual or by having the individual pay that amount to the department.

871—25.16(96) State payment offset. An individual who is owed a payment from the state of at least \$50 and owes an overpayment of benefits of at least \$50 is subject to an offset against the individual's payment from the state to recover all or a part of the individual's overpayment of benefits and to reimburse the department of revenue for administrative costs to execute the offset. All overpayments, whether fraud or nonfraud, are included in this process.

25.16(1) The individual's name and social security number are given to the department of revenue.

25.16(2) The department of revenue notifies the department that an overpaid individual is owed a payment from the state. The department then notifies the overpaid individual of the potential offset against the individual's payment from the state.

25.16(3) In the case of a joint or combined income tax filing, the individual has ten days from the postmark date on the decision to request a split of the refund to ensure the other party's portion of the refund is not offset. When a request is made, the department notifies the department of revenue to make the split. The department then notifies the overpaid individual of the amount of the offset. If the request for split of the refund is not made timely, the entire income tax refund becomes subject to offset.

25.16(4) Any appeal by the individual is limited to the validity of the department's authority to recoup the overpayment through offset.

25.16(5) In the event that the amount of the offset exceeds the remaining overpayment, the department shall issue to the individual a special check equal to the amount of the excess.

This rule is intended to implement Iowa Code sections 96.11 and 421.17(26,29).

[ARC 3402C, IAB 10/11/17, effective 11/15/17]

871—25.17(96) Federal payment offset. Pursuant to 42 U.S.C. 503 §303(m) and 26 U.S.C. §6402(f), the department shall utilize the treasury offset program in order to collect covered unemployment compensation.

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CHAPTER 3
POSTING, INSPECTIONS, CITATIONS AND PROPOSED PENALTIES

[Prior to 9/24/86, Labor, Bureau of [530]]

[Prior to 10/7/98, see 347—Ch 3]

875—3.1(88) Posting of notice; availability of the Act, regulations and applicable standards.

3.1(1) Each employer shall post and keep posted a notice or notices informing employees of the protections and obligations provided for in the Act, and that for assistance and information, including copies of the Act and of specific safety and health standards, employees should contact the employer or the department of workforce development, division of labor services. The notice or notices shall be posted by the employer in each establishment in a conspicuous place or places where notices to employees are customarily posted. Each employer shall take steps to ensure that such notices are not altered, defaced or covered by other materials. The notice or notices will be furnished by the division of labor services.

Reproductions or facsimiles of the state poster shall constitute compliance with the posting requirements of Iowa Code section 88.6(3) “a” where such reproductions or facsimiles are at least 8½ inches by 14 inches, and the printing size is at least 10 point. Whenever the size of the poster increases, the size of the print shall also increase accordingly. The caption or heading on the poster shall be in large type, generally not less than 36 point.

3.1(2) “*Establishment*” means a single physical location where business is conducted or where services or industrial operations are performed. (For example: A factory, mill, store, hotel, restaurant, movie theatre, farm, ranch, bank, sales office, warehouse, central administrative office or governmental agency or subdivision thereof.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and a separate notice or notices shall be posted in each such establishment, to the extent that such notices have been furnished by the Occupational Safety and Health Administration, U.S. Department of Labor, or the division of labor services. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation, communications and electric, gas and sanitary services, the notice or notices required by this rule shall be posted at the location to which employees report each day. Where employees do not usually work at, or report to, a single establishment, such as harbor workers, traveling salespersons, technicians, engineers, and similar personnel, such notice or notices shall be posted at the location from which the employees operate to carry out their activities. In all cases, such notice or notices shall be posted in accordance with the requirements of subrule 3.1(1).

3.1(3) Copies of the Act, all regulations published and all applicable safety and health rules are available from the division of labor services. If an employer has obtained copies of these materials from the division of labor services or the U.S. Department of Labor, the employer shall make them available upon request to any employee or authorized employee representative for review in the establishment where the employee is employed on the same day the request is made or at the earliest time mutually convenient to the employee or authorized employee representative and the employer.

3.1(4) Any employer failing to comply with the provisions of this rule shall be subject to citation and penalty in accordance with the provisions of Iowa Code section 88.14.

This rule is intended to implement Iowa Code section 88.6(3) “a.”

[ARC 3557C, IAB 1/3/18, effective 2/11/18]

875—3.2(88) Objection to inspection.

3.2(1) Upon a refusal to permit a compliance safety and health officer, in the exercise of official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records or to question any employer, owner, operator, agent or employee, or to permit a representative of employees to accompany the compliance safety and health officer during the physical inspection of any workplace, the compliance safety and health officer shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records or interviews concerning which no objection is raised. The compliance safety and

health officer shall endeavor to ascertain the reason for such refusal and shall immediately report the refusal and the reason therefor to the labor commissioner or the commissioner's designee. The labor commissioner shall promptly take appropriate action, including compulsory process, if necessary.

3.2(2) Compulsory process shall be sought in advance of an attempted inspection or investigation if, in the judgment of the labor commissioner or a designee, circumstances exist which make such preinspection process desirable or necessary. Some examples of circumstances in which it may be desirable or necessary to seek compulsory process in advance of an attempt to inspect or investigate include (but are not limited to):

a. When the employer's past practice either implicitly or explicitly puts the commissioner on notice that a warrantless inspection will not be allowed, or

b. When an inspection includes the use of special equipment or when the presence of an expert or experts is needed in order to properly conduct the inspection, and procuring a warrant prior to an attempt to inspect would alleviate the difficulties or costs encountered in coordinating the availability of such equipment or expert.

3.2(3) For the purposes of this rule, the term "compulsory process" shall mean the institution of any appropriate action, including ex parte application for an inspection warrant or its equivalent. Ex parte inspection warrants shall be the preferred form of compulsory process in all circumstances where compulsory process is relied upon to seek entry to a workplace under this rule.

This rule is intended to implement Iowa Code section 88.6(1).

875—3.3(88) Entry not a waiver. Any permission to enter, inspect, review records or question any person shall not imply or be conditioned upon a waiver of any cause of action, citation or penalty under the Act. Compliance safety and health officers are not authorized to grant any such waiver.

This rule is intended to implement Iowa Code section 88.6(1).

875—3.4(88) Advance notice of inspections.

3.4(1) Advance notice of inspections may not be given, except in the following situations:

a. In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible;

b. In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection;

c. Where necessary to ensure the presence of representatives of the employer and employees or the appropriate personnel needed to aid in the inspection; and

d. In other circumstances where the labor commissioner or the commissioner's designee determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

3.4(2) In situations described in 3.4(1), advance notice of inspections may be given only if authorized by the labor commissioner or the commissioner's designee, except that in cases of apparent imminent danger, advance notice may be given by the compliance safety and health officer without such authorization if the labor commissioner or the commissioner's designee is not immediately available. When advance notice is given, it shall be the employer's responsibility promptly to notify the authorized representative of employees of the inspection, if the identity of the representative is known to the employer. Upon the request of the employer, the compliance safety and health officer will inform the authorized representative of employees of the inspection, provided that the employer furnishes the compliance safety and health officer with the identity of the representative and with other information as is necessary to enable the compliance safety and health officer promptly to inform the representative of the inspection. An employer who fails to comply with the obligation under this rule promptly to inform the authorized representative of employees of the inspection, or to furnish such information as is necessary to enable the compliance safety and health officer promptly to inform the representative of the inspection, may be subject to citation and penalty under Iowa Code section 88.14(3). Advance notice in any of the situations described in subrule 3.4(1) shall not be given more than 24 hours before

the inspection is scheduled to be conducted, except in apparent imminent danger situations and in other unusual circumstances.

This rule is intended to implement Iowa Code sections 88.6(1) and 88.14(6).

875—3.5(88) Conduct of inspections.

3.5(1) Inspections shall take place at the times and in the places of employment as the labor commissioner or the commissioner's designee may direct. At the beginning of an inspection, compliance safety and health officers shall present their credentials to the owner, operator or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records they wish to review. However, such designation of records shall not preclude access to additional records.

3.5(2) Compliance safety and health officers shall have authority to take environmental samples and to take or obtain photographs related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of the establishment. As used herein the term "employ other reasonable investigative techniques" includes, but is not limited to, the use of cameras, audio and videotaping equipment, devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges and other similar devices to employees in order to monitor their exposures.

3.5(3) In taking photographs and samples, compliance safety and health officers shall take reasonable precautions to ensure that such actions with flash, spark-producing or other equipment would not be hazardous. Compliance safety and health officers shall comply with all employer safety and health rules and practices at the establishment being inspected, and they shall wear and use appropriate protective clothing and equipment.

3.5(4) The conduct of inspections shall be such as to preclude unreasonable disruption of the operations of the employer's establishment.

3.5(5) At the conclusion of the inspection, the compliance safety and health officer shall confer with the employer or representative and informally advise the employer or representative of any apparent safety or health violations disclosed by the inspection. During the conference, the employer shall be afforded an opportunity to bring to the attention of the compliance safety and health officer any pertinent information regarding conditions in the workplace.

3.5(6) Inspections shall be conducted in accordance with the requirements of this chapter.

This rule is intended to implement Iowa Code section 88.6(1).

[ARC 8522B, IAB 2/10/10, effective 3/17/10]

875—3.6(88) Representatives of employers and employees.

3.6(1) Compliance safety and health officers shall be in charge of inspections and questioning of persons. A representative of the employer and a representative authorized by employees shall be given an opportunity to accompany the compliance safety and health officer during the physical inspection of any workplace for the purpose of aiding the inspection. A compliance safety and health officer may permit additional employer representatives and additional representatives authorized by employees to accompany the compliance safety and health officer where the compliance safety and health officer determines that the additional representatives will further aid the inspection. A different employer and employee representative may accompany the compliance safety and health officer during each different phase of an inspection if this will not interfere with the conduct of the inspection.

3.6(2) Compliance safety and health officers shall have authority to resolve all disputes as to who is the representative authorized by the employer and employees for the purpose of this rule. If there is no authorized representative of employees, or if the compliance safety and health officer is unable to determine with reasonable certainty who is the representative, the compliance safety and health officer should consult with a reasonable number of employees concerning matters of safety and health in the workplace.

3.6(3) The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the compliance safety and health officer, good cause has been shown

why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or a safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, the third party may accompany the compliance safety and health officer during the inspection.

3.6(4) Compliance safety and health officers are authorized to deny the right of accompaniment under this rule to any person whose conduct interferes with a fair and orderly inspection.

This rule is intended to implement Iowa Code sections 88.6(1) and 88.6(4).

875—3.7(88) Complaints by employees.

3.7(1) Any employee or representative of employees who believes that a violation of the Act exists in any workplace where the employee is employed may request an inspection of the workplace by giving notice of the alleged violation to the commissioner or a designee. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy shall be provided the employer or agent by the commissioner's designee no later than at the time of inspection, except that, upon the request of the person giving the notice, the identity and the identities of individual employees referred to therein shall not appear in the copy or on any record published, released, or made available by the division of labor services.

3.7(2) If upon receipt of notification the commissioner or a designee determines that the complaint meets the requirements set forth in subrule 3.7(1), and that there are reasonable grounds to believe that the alleged violation exists, an inspection shall be made as soon as practicable, to determine if the alleged violation exists. Inspections under this rule shall not be limited to matters referred to in the complaint.

3.7(3) During any inspection of a workplace, any employee or representative of employees employed in the workplace may notify the compliance safety and health officer of any violation of the Act which they have reason to believe exists in the workplace.

875—3.8(88) Trade or governmental secrets.

3.8(1) At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might reveal trade or governmental secrets. If the compliance safety and health officer has no clear reason to question such identification, information obtained in such areas, including all negatives and prints of photographs and environmental samples, shall be labeled "confidential-trade/governmental secrets" and shall not be disclosed except in accordance with the provisions of Iowa Code section 88.12.

3.8(2) Upon the request of an employer, any authorized representative of employees in an area containing trade or governmental secrets shall be an employee in that area or an employee authorized by the employer to enter that area. Where there is no representative or employee, the compliance safety and health officer shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.

This rule is intended to implement Iowa Code sections 88.6(1) and 88.12.

875—3.9(88) Imminent danger. Whenever and as soon as a compliance safety and health officer concludes on the basis of an inspection that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by the Act, the affected employees and employers shall be notified as provided in Iowa Code section 88.11(3). Appropriate citations and notices of proposed penalties may be issued with respect to an imminent danger even though, after being informed of the danger by the compliance safety and health officer, the employer immediately eliminates the imminence of the danger and initiates steps to abate the danger.

875—3.10(88) Consultation with employees. Compliance safety and health officers may consult with employees concerning matters of occupational safety and health to the extent that they deem necessary for

the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of the Act which the employee has reason to believe exists in the workplace to the attention of the compliance safety and health officer.

This rule is intended to implement Iowa Code sections 88.6(1) and 88.6(4).

875—3.11(88) Citations.

3.11(1) The civil penalties proposed by the labor commissioner on or after June 30, 2018, are as follows:

a. Willful violation. The penalty for each willful violation under Iowa Code section 88.14(1) shall not be less than \$9,239 and shall not exceed \$129,336.

b. Repeated violation. The penalty for each repeated violation under Iowa Code section 88.14(1) shall not exceed \$129,336.

c. Serious violation. The penalty for each serious violation under Iowa Code section 88.14(2) shall not exceed \$12,934.

d. Other-than-serious violation. The penalty for each other-than-serious violation under Iowa Code section 88.14(3) shall not exceed \$12,934.

e. Failure to correct violation. The penalty for failure to correct a violation under Iowa Code section 88.14(4) shall not exceed \$12,934 per day.

3.11(2) Upon receipt of any citation under the Act, the employer shall immediately post the citation or a copy thereof, unedited, at or near each place an alleged violation referred to in the citation occurred, except as provided in this rule. Where, because of the nature of the employer's operations, it is not practicable to post the citation at or near each place of alleged violation, the citation shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, where employers are engaged in activities which are physically dispersed, the citation may be posted at the location to which employees report each day. Where employees do not primarily work at or report to a single location, the citation may be posted at the location from which the employees operate to carry out their activities. The employer shall take steps to ensure that the citation is not altered, defaced or covered by other material. Notices of de minimis violations need not be posted.

3.11(3) Each citation or a copy thereof shall remain posted until the violation has been abated, or for three working days, whichever is later. The filing by the employer of a notice of intention to contest shall not affect the posting responsibility under this rule unless and until the employment appeal board issues a final order vacating the citation.

3.11(4) An employer to whom a citation has been issued may post a notice in the same location where such citation is posted indicating that the citation is being contested before the employment appeal board and the notice may explain the reasons for the contest. The employer may also indicate that specified steps have been taken to abate the violation.

3.11(5) Any employer failing to comply with the provisions of subrules 3.11(2) and 3.11(3) shall be subject to citation and penalty in accordance with the provisions of Iowa Code section 88.14.

3.11(6) Any employer to whom a citation and notification of penalty have been issued may, under Iowa Code section 88.8, notify the commissioner of the employer's intention to contest the citation or notification of penalty. The notice of contest shall be in writing. The notice of contest shall be received by the division of labor services or postmarked no later than 15 working days after the receipt by the employer of the citation and notification of penalty. The notice of contest may be provided to the division of labor services by mail, personal delivery or facsimile transmission.

This rule is intended to implement Iowa Code chapter 88.

[ARC 3557C, IAB 1/3/18, effective 2/11/18; ARC 3810C, IAB 5/23/18, effective 6/30/18]

875—3.12(88) Informal conferences. At the request of an affected employer, employee, or representative of employees, the labor commissioner or the commissioner's designee may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest. The settlement of any issue at the conference shall be subject to the rules of procedure prescribed by the employment appeal board. If the conference is

requested by the employer, an affected employee or the employee's representative shall be afforded an opportunity to participate, at the discretion of the labor commissioner or the commissioner's designee. If the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the labor commissioner or the commissioner's designee. Any party may be represented by counsel at the conference. No conference or request for a conference shall operate as a stay of any 15-working-day period for filing a notice of intention to contest.

This rule is intended to implement Iowa Code sections 17A.3(1) "b" and 17A.10.

875—3.13(88) Petitions for modification of abatement date.

3.13(1) An employer may file a petition for modification of abatement date when the employer has made a good faith effort to comply with the abatement requirements of a citation, but such abatement has not been completed because of factors beyond its reasonable control.

3.13(2) A petition for modification of abatement date shall be in writing and shall include the following information:

a. All steps taken by the employer, and the dates of the action, in an effort to achieve compliance during the prescribed abatement period.

b. The specific additional abatement time necessary in order to achieve compliance.

c. The reasons the additional time is necessary, including the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

d. All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

e. A certification that a copy of the petition and notice informing affected employees of their rights to party status has been posted and, if appropriate, served on the authorized representative of affected employees, in accordance with 3.13(3) "a" and a certification of the date upon which the posting and service was made. A notice in the following form shall be deemed to comply with this paragraph:

(Name of employer)

Your employer has been cited by the commissioner of labor for violation of the Iowa Occupational Safety and Health Act and has requested additional time to correct one or more of the violations. Affected employees are entitled to participate as parties under terms and conditions established by the Iowa employment appeal board in its rules of procedure. Affected employees or their representatives desiring to participate must file a written objection to the employer's petition with the commissioner of labor. Failure to file the objection within ten working days of the first posting of the accompanying petition and this notice shall constitute a waiver of any further right to object to the petition or to participate in any proceedings related thereto. Objections shall be sent to the commissioner's designee: Iowa OSHA, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. All papers relevant to this matter may be inspected at: (place reasonably convenient to employees, preferably at or near workplace).

3.13(3) A petition for modification of abatement date shall be filed with the labor commissioner or the commissioner's designee no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

a. A copy of the petition and a notice of employee rights complying with 3.13(2) "e" shall be posted in a conspicuous place where all affected employees will have notice thereof or near the location where the violation occurred. The petition and notice of employee rights shall remain posted for a period of ten working days. Where affected employees are represented by an authorized representative, the representative shall be served with a copy of the petition and notice of employee rights.

b. Affected employees or their representatives may file an objection in writing to a petition with the labor commissioner or the commissioner's designee. Failure to file the objection within ten working days of the date of posting of the petition and notice of employee rights or of service upon an authorized representative shall constitute a waiver of any further right to object to the petition.

c. The labor commissioner or the commissioner's designee shall have the authority to approve any filed petition for modification of abatement date. Uncontested petitions shall become final orders pursuant to Iowa Code section 88.8.

d. The labor commissioner or the commissioner's designee shall not exercise approval power until the expiration of 15 working days from the date the petition and notice of employee rights were posted or served by the employer.

3.13(4) Where any petition is objected to by the labor commissioner or the commissioner's designee or affected employees, the petition, citation, and any objections shall be forwarded to the employment appeal board within 3 working days after the expiration of the 15-day period set out in subrule 3.13(3) "d."

This rule is intended to implement Iowa Code section 88.8.
[ARC 3557C, IAB 1/3/18, effective 2/11/18]

875—3.14 to 3.18 Reserved.

875—3.19(88) Abatement verification.

3.19(1) Scope and application. This rule applies to employers who receive a citation for a violation of the Iowa Occupational Safety and Health Act.

3.19(2) Definitions.

"Abatement" means action by an employer to comply with a cited standard or regulation or to eliminate a recognized hazard identified by OSHA during an inspection.

"Abatement date" means:

1. For an uncontested citation item, the later of:
 - The date in the citation for abatement of the violation;
 - The date approved by OSHA or established in litigation as a result of a petition for modification of the abatement date (PMA); or
 - The date established in a citation by an informal settlement agreement.
2. For a contested citation item for which the employment appeal board has issued a final order affirming the violation, the later of:
 - The date identified in the final order for abatement; or
 - The date computed by adding the period allowed in the citation for abatement to the final order date;
 - The date established by a formal settlement agreement.

"Affected employees" means those employees who are exposed to the hazard(s) identified as a violation(s) in a citation.

"Final order date" means:

1. For an uncontested citation item, the fifteenth working day after the employer's receipt of the citation;
2. For a contested citation item:
 - The thirtieth day after the date on which a final order was entered by the employment appeal board or
 - The date on which a court issues a decision affirming the violation in a case in which a final order of employment appeal board has been stayed.

"Movable equipment" means a hand-held or non-hand-held machine or device, powered or unpowered, that is used to do work and is moved within or between work sites.

3.19(3) Abatement certification.

a. Within ten calendar days after the abatement date, the employer must certify to the division that each cited violation has been abated, except as provided in paragraph "b" of this subrule.

b. The employer is not required to certify abatement if the compliance safety and health officer during the on-site portion of the inspection:

- (1) Observes, within 24 hours after a violation is identified, that abatement has occurred; and
- (2) Notes in the citation that abatement has occurred.

c. The employer's certification that abatement is complete must include, for each cited violation, in addition to the information required in 3.19(8), the date and method of abatement and a statement that affected employees and their representatives have been informed of the abatement.

3.19(4) Abatement documentation.

a. The employer must submit to the division, along with the information on abatement certification required by subrule 3.19(3), paragraph "c," documents demonstrating that abatement is complete for each willful or repeat violation and for any serious violation for which the division indicates in the citation that the abatement documentation is required.

b. Documents demonstrating that abatement is complete may include, but are not limited to, evidence of the purchase or repair of equipment, photographic or video evidence of abatement, or other written records.

3.19(5) Abatement plans.

a. The division may require an employer to submit an abatement plan for each cited violation (except an other-than-serious violation) when the time permitted for abatement is more than 90 calendar days. If an abatement plan is required, the citation must so indicate.

b. The employer must submit an abatement plan for each cited violation within 25 calendar days from the final order date when the citation indicates that such a plan is required. The abatement plan must identify the violation and the steps to be taken to achieve abatement, including a schedule for completing abatement and, where necessary, how employees will be protected from exposure to the violative condition in the interim until abatement is complete.

3.19(6) Progress reports.

a. An employer who is required to submit an abatement plan may also be required to submit periodic progress reports for each cited violation. The citation must indicate:

- (1) That periodic progress reports are required and the citation items for which they are required;
- (2) The date on which an initial progress report must be submitted, which may be no sooner than 30 calendar days after submission of an abatement plan;
- (3) Whether additional progress reports are required; and
- (4) The date(s) on which additional progress reports must be submitted.

b. For each violation, the progress report must identify, in a single sentence if possible, the action taken to achieve abatement and the date the action was taken.

3.19(7) Employee notification.

a. The employer must inform affected employees and their representative(s) about abatement activities covered by this rule by posting a copy of each document submitted to the division or a summary of the document near the place where the violation occurred.

b. Where posting does not effectively inform employees and their representatives about abatement activities (for example, for employers who have mobile work operations), the employer shall:

- (1) Post each document or a summary of the document in a location where it will be readily observable by affected employees and their representatives; or
- (2) Take other steps to communicate fully to affected employees and their representatives about abatement activities.
- (3) The employer must inform employees and their representatives of their right to examine and copy all abatement documents submitted to the division.

c. An employee or an employee representative shall submit a request to examine and copy abatement documents within three working days of receiving notice that the documents have been submitted. The employer shall comply with an employee's or employee representative's request to examine and copy abatement documents within five working days of receiving the request.

d. The employer must ensure that notice to employees and employee representatives is provided at the same time or before the information is provided to the division and that abatement documents are:

- (1) Not altered, defaced, or covered by other material; and
- (2) Remain posted for three working days after submission to the division.

3.19(8) Transmitting abatement documents.

a. The employer must include, in each submission required by this rule, the following information:

1. The employer's name and address;
 2. The inspection number to which the submission relates;
 3. The citation and item numbers to which the submission relates;
 4. A statement that the information submitted is accurate; and
 5. The signature of the employer or the employer's authorized representative.
- b.* The date of postmark is the date of submission for mailed documents. For documents transmitted by other means, the date the division receives the document is the date of submission.

3.19(9) Movable equipment.

a. For serious, repeat, and willful violations involving movable equipment, the employer must attach a warning tag or a copy of the citation to the operating controls or to the cited component of equipment that is moved within the work site or between work sites. Attaching a copy of the citation to the equipment is deemed to meet the tagging requirement of this paragraph as well as the posting requirement of rule 875—3.11(88).

b. The employer must use a warning tag that properly warns employees about the nature of the violation involving the equipment and identifies the location of the citation issued. A sample tag is available at osha.gov as Appendix C to 29 CFR 1903.19.

c. If the violation has not already been abated, a warning tag or copy of the citation must be attached to the equipment:

- (1) For hand-held equipment, immediately after the employer receives the citation; or
- (2) For non-hand-held equipment, prior to moving the equipment within or between work sites.

d. For the construction industry, a tag that is designed and used in accordance with 29 CFR 1926.20(b)(3) and 29 CFR 1926.200(h) is deemed by OSHA to meet the requirements of this rule when the information required by subrule 3.19(9), paragraph "b," is included on the tag.

e. The employer must ensure that the tag or copy of the citation attached to movable equipment is not altered, defaced, or covered by other material.

f. The employer must ensure that the tag or copy of the citation attached to movable equipment remains attached until:

- (1) The violation has been abated and all abatement verification documents required by this regulation have been submitted to the division;
- (2) The cited equipment has been permanently removed from service or is no longer within the employer's control; or
- (3) The appeal board issues a final order vacating the citation.

[ARC 3557C, IAB 1/3/18, effective 2/11/18]

875—3.20(88) Policy regarding employee rescue activities.

3.20(1) The labor commissioner or the commissioner's designee shall review the inspection report of the compliance safety and health officer. If, on the basis of the report, the labor commissioner or the commissioner's designee believes that the employer has violated a requirement of Iowa Code section 88.4 or any rule, the commissioner or the commissioner's designee shall issue to the employer either a citation or a notice of de minimis violations which has no direct or immediate relationship to safety or health. An appropriate citation or notice of de minimis violations shall be issued even though after being informed of an alleged violation by the compliance safety and health officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Any citation or notice of de minimis violations shall be issued with reasonable promptness after termination of the inspection. No citation may be issued under this rule after the expiration of six months following the occurrence of any alleged violation.

3.20(2) Any citation shall describe with particularity the nature of the alleged violation, including a reference to Iowa Code chapter 88, or rule alleged to have been violated. Any citation shall also fix a reasonable time or times for the abatement of the alleged violation.

3.20(3) If a citation or notice of de minimis violations is issued for a violation alleged in a request for inspection under subrule 3.7(1) or a notification of violation under subrule 3.7(3), a copy of the citation or notice of de minimis violations shall also be sent to the employee or representative of employees who made such request or notification.

3.20(4) Every citation shall state that the issuance of a citation does not constitute a finding that a violation has occurred unless there is a failure to contest as provided for in Iowa Code chapter 88 or, if contested, unless the citation is affirmed by the appeal board.

3.20(5) No citation may be issued to an employer because of a rescue activity undertaken by an employee of that employer with respect to an individual in imminent danger unless:

a. The employee is designated or assigned by the employer to have responsibility to perform or assist in rescue operations, and the employer fails to provide protection of the safety and health of the employee, including failing to provide appropriate training and rescue equipment; or

b. The employee is directed by the employer to perform rescue activities in the course of carrying out the employee's job duties, and the employer fails to provide protection of the safety and health of such employee, including failing to provide appropriate training and rescue equipment; or

c. The employee is employed in a workplace that requires the employee to carry out duties that are directly related to a workplace operation where the likelihood of life-threatening accidents is foreseeable, such as a workplace operation where employees are located in confined spaces or trenches, handle hazardous waste, respond to emergency situations, perform excavations, or perform construction over water; and such employee has not been designated or assigned to perform or assist in rescue operations and voluntarily elects to rescue such an individual. Additionally, the employer has failed to instruct employees not designated or assigned to perform or assist in rescue operations of the arrangements for rescue, not to attempt rescue, and of the hazards of attempting rescue without adequate training or equipment.

3.20(6) For purposes of this policy, the term "imminent danger" means the existence of any condition or practice that could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated.

875—3.21 Reserved.

875—3.22(88,89B) Additional hazard communication training requirements.

3.22(1) *Training format.* The employer may present the training program to the employee in any format; however, the employer shall preserve a written summary and synopsis of the training, a cassette tape recording of an oral presentation, or a videotape recording of an audio-video presentation of the training relied upon by the employer for compliance with 29 CFR 1910.1200(h), and shall allow employees and their designated representatives access to the written synopsis, tape recording, or videotape recording.

3.22(2) *Review by the division.* The training program shall be available for review and approval upon inspection by the division. Upon request by the commissioner, the employer shall make available the written synopsis, cassette tape recording, or videotape recording used or prepared by the employer. The commissioner may conduct an inspection to review an actual training program or review the employer's records of a training program.

875—3.23(88) Definitions. The definitions and interpretations contained in Iowa Code section 88.3 shall be applicable to the terms when used in this chapter. As used in this chapter unless the context clearly requires otherwise:

"*Act*" means the Iowa Occupational Safety and Health Act of 1972, Iowa Code chapter 88.

"*Compliance safety and health officer*" means a person authorized by the labor commissioner of the department of workforce development, division of labor services, to conduct inspections.

"*Division*" means the Iowa division of labor of the department of workforce development.

"*Inspection*" means any inspection of an employer's factory, plant, establishment, construction site or other area, workplace or environment where work is performed by an employee of an employer, and includes any inspection conducted pursuant to a filed complaint, and any follow-up inspection, accident investigation or other inspections conducted under the Act.

“*Working days*” means Mondays through Fridays but shall not include Saturdays, Sundays or federal or state holidays. In computing 15 working days, the day of receipt of any notice shall not be included, and the last day of the 15 working days shall be included.

This rule is intended to implement Iowa Code section 88.6.

875—3.24(88) Occupational safety and health bureau forms. Rescinded **ARC 3557C**, IAB 1/3/18, effective 2/11/18.

These rules are intended to implement Iowa Code chapters 17A and 88.

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