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 1
ADMINISTRATION

871—1.1(84A) Mission and overall organization.

1.1(1) *Mission.* We power Iowa's possibilities by connecting workers to opportunities and employers to workforce solutions.

1.1(2) *Vision.* To create, enable and sustain the most future ready workforce in the nation.

1.1(3) *Overall organization.* The chief executive officer of the department is the director of the department of workforce development who shall be appointed by the governor with the approval of two-thirds of the members of the senate and is responsible directly to the governor.

[**ARC 8207C**, IAB 9/4/24, effective 10/9/24]

This rule is intended to implement Iowa Code chapter 84A.

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[Filed ARC 8207C (Notice ARC 8130C, IAB 7/10/24), IAB 9/4/24, effective 10/9/24]

CHAPTER 2
CUSTOMER AND ADMINISTRATIVE SERVICES DIVISION

Rescinded **ARC 8206C**, IAB 9/4/24, effective 10/9/24

CHAPTERS 3 to 9
Reserved

CHAPTER 10
RESEARCH AND INFORMATION SERVICES DIVISION

871—10.1(84A) Mission and organization.

10.1(1) *Mission.* The labor market information division conducts research, develops labor market information, and provides information services in support of the department of workforce development's mission.

10.1(2) *Operation and administration.* The division is under the direction of a division administrator who reports to the deputy director. The division functions include planning, researching, analyzing, and reporting labor market information. The division administrator directs and leads labor market research, workforce data collection, and related projects.

[**ARC 8194C**, IAB 8/7/24, effective 9/11/24]

871—10.2(84A) Research and reporting bureau. The bureau is under the direction of the division administrator and is responsible for research and reporting functions of the unemployment compensation program in Iowa. The bureau is responsible for:

1. Calculating the financial impact of proposed changes to Iowa's unemployment compensation system with regard to the unemployment compensation fund, employer tax rates, and claimant benefits.
2. Monitoring the unemployment compensation fund solvency and writing legislative proposals recommending revisions to the tax and benefits sections in Iowa Code chapter 96.
3. Producing required and special reports analyzing and reporting the unemployment compensation system workload activities, employer compensation payments, and claimant benefit payments.
4. Calculating the contribution rate tables for private employers and the base rate for nonprofit and government employers.
5. Preparing, analyzing and distributing projected industry and occupational employment information for the state and service delivery areas.
6. Preparing and distributing economic analyses of the Iowa labor market in hard copy and electronic formats and by in-person presentations.
7. Conducting labor market research using surveys and secondary and administrative data to provide understanding of the labor supply and demand.
8. Collecting and reporting workplace injury, illness, and fatality statistics.
9. Providing training in the uses of occupational and labor market information to school counselors, teachers and labor market intermediaries.

[**ARC 8194C**, IAB 8/7/24, effective 9/11/24]

871—10.3(84A) Labor statistics bureau. The bureau is under the direction of a chief who assists the division administrator in planning, directing and coordinating the production of employment data for Iowa and the counties. The bureau is responsible for:

1. Collecting, analyzing and summarizing data and producing monthly employment and earnings estimates for Iowa, metropolitan statistical areas (MSAs) in Iowa, and counties in Iowa.
2. Collecting, analyzing and summarizing employment and wage data from Iowa employers subject to the unemployment insurance law to produce statewide and county data by industrial groups.
3. Providing occupational and training information to planners of vocational and other training programs.
4. Paying special attention to the career development and labor market information needs of Iowans.
5. Providing training in the uses of occupational and labor market information to school counselors, teachers and labor market intermediaries.
6. Collecting, preparing, analyzing and distributing labor force, unemployment, unemployment rate and total employment information for the state, MSAs, counties and selected cities in Iowa.
7. Collecting, preparing, analyzing and distributing occupational employment and occupational wage information for the state, MSAs and the balance of the state.
8. Developing and maintaining a national reporting system for the Current Employment Statistics program.

[**ARC 8194C**, IAB 8/7/24, effective 9/11/24]

These rules are intended to implement Iowa Code chapter 84A.

[Filed 2/20/97, Notice 1/15/97—published 3/12/97, effective 4/16/97]

[Filed ARC 8194C (Notice ARC 8065C, IAB 6/12/24), IAB 8/7/24, effective 9/11/24]

CHAPTER 11
EMPLOYER RECORDS AND REPORTS

871—11.1(96) Records. Each employer shall keep records and submit reports at such times as the department may require, and shall comply with the instructions printed upon any report forms issued by the department pertaining to the preparation and return of such reports.
[**ARC 8686C**, IAB 12/25/24, effective 1/29/25]

871—11.2(96) Filing of multiple worksite report. Each employer having more than one physical worksite at which workers are employed shall file a Multiple Worksite Report (BLS 3020) for each quarter, providing monthly employment for the three payroll periods that include the twelfth of each month and the amount of wages subject to the unemployment insurance law for each location within this state. This report is required as a supplement to the Employer's Contribution and Payroll Report. Failure to provide this report may result in the assessment of a penalty as provided for in rule 871—23.60(96).
[**ARC 8686C**, IAB 12/25/24, effective 1/29/25]

871—11.3(96) Filing of industry verification statement. Each employer shall complete the Industry Verification Statement, BLS 3023VS or 3023VM, for the purpose of verifying the primary products or services of each physical worksite.
[**ARC 8686C**, IAB 12/25/24, effective 1/29/25]

These rules are intended to implement Iowa Code chapter 96.

[Filed 2/20/97, Notice 1/15/97—published 3/12/97, effective 4/16/97]
[Filed ARC 8686C (Notice ARC 8313C, IAB 10/30/24), IAB 12/25/24, effective 1/29/25]

CHAPTER 12
FORMS AND INFORMATIONAL MATERIALS

871—12.1(96) Federal restriction—forms. The research and information services division uses many federally prepared and supplied forms that contain an office of management and budget (OMB) number and an approved expiration date. The department, which receives and uses in its normal operations such federal forms through a federally appointed special agent, is subject to all of the provisions, restrictions, sanctions and penalties imposed by the Federal Reports Act of 1942 and subsequent amendments.

Form No. Name and description of form.

12.1(1) *Federal forms.*

a. BLS 790, Bureau of Labor Statistics Report on Employment, Payroll and Hours. A research and information services division shuttle schedule sent each month, to a sample of Iowa employers, to collect employment, payroll and hours worked information.

b. BLS 3020, Multiple Worksite Report (65-5519) [reference 345—2.3(96)]. A research and information services division form required each quarter of Iowa employers subject to the unemployment insurance law.

c. BLS 3023VS, Industry Verification Statement (single worksite). A research and information services division form required of employers on a periodic basis to verify the products or services, or both, provided by an employer to ensure that the correct North American Industry Classification System code is assigned to the employer's unemployment insurance account.

d. BLS 3023VM, Industry Verification Statement (multiple worksites). A research and information services division form required of employers on a periodic basis to verify the products or services, or both, provided at each worksite by an employer to ensure that the correct North American Industry Classification System code is assigned to each employer location.

e. BLS 2877, Occupational Employment Survey. Sent twice a year to a sample of employers. Voluntary. Used to obtain confidential information on occupational employment and occupational wages by industry. Forms differ by industry.

12.1(2) *State form.* E-Z Form—for Occupational Employment Survey. Short form for collecting confidential occupational employment and occupational wages. Voluntary.

This rule is intended to implement Iowa Code chapter 96.

[**ARC 8687C**, IAB 12/25/24, effective 1/29/25]

[Filed 2/20/97, Notice 1/15/97—published 3/12/97, effective 4/16/97]

[Filed ARC 8687C (Notice ARC 8308C, IAB 10/30/24), IAB 12/25/24, effective 1/29/25]

CHAPTER 13
NEW EMPLOYMENT OPPORTUNITIES FUND
Rescinded **ARC 8227C**, IAB 9/18/24, effective 10/23/24

CHAPTER 14
NEW IOWAN CENTERS
Rescinded **ARC 8208C**, IAB 9/4/24, effective 10/9/24

CHAPTER 15
Reserved

CHAPTER 16
EMPLOYER INNOVATION FUND
Rescinded **ARC 8228C**, IAB 9/18/24, effective 10/23/24

CHAPTERS 17 to 20
Reserved

CHAPTER 21
UNEMPLOYMENT INSURANCE SERVICES DIVISION

871—21.1(96) Unemployment insurance services division. The primary responsibility of the unemployment insurance services division is to administer the provisions of the Iowa employment security law and related federal programs in accordance with pertinent laws, regulations, and policies. The division administers the payment of job insurance benefits to eligible individuals, determines which employers are subject to the state and federal laws enacted in this area, supervises the collection of taxes from these employers, and oversees a program to control the quality of benefit payment and revenue collection. These functions are performed by the following bureaus:

21.1(1) *Benefits bureau.* The benefits bureau determines the eligibility of individuals claiming unemployment insurance. It processes unemployment compensation in accordance with Iowa Code sections 96.1A(32), 96.7(2)*"d,"* and 96.40 and is responsible for payments of other special federal unemployment insurance benefits as agreed to by the United States Department of Labor and the state of Iowa. The benefits bureau is responsible for:

a. Screening all employer protests,

b. Investigating all labor dispute protests and issuing appropriate decisions,

c. Performing fact-finding interviews with claimants and employers to resolve issues such as the determination of claimant eligibility and employer liability for benefit charges,

d. Responding to communications involving technical matters related to unemployment insurance,

e. Correcting records due to reversal or modification of a decision on appeal,

f. Processing initial interstate claims; processing combined wage claims; and issuing duplicate benefit payments for lost, stolen, outdated, or returned payments,

g. Retaining and organizing records, producing records as required by law, and collecting fees for such production, and

h. Maintaining the voluntary income tax withholding program in accordance with Iowa Code section 96.3(10) and reporting tax withholding and taxable benefits to the relevant federal and state authorities.

21.1(2) *Tax bureau.* The tax bureau is responsible for contacting Iowa and out-of-state employers that do business in Iowa to establish taxpayers' liability under the law. This includes:

a. Maintaining and controlling all records of unemployment insurance taxes paid in the state and assigning rates each year to each employer,

b. Collecting and depositing all money received for contribution reports, delinquent contribution reports, benefit reimbursements, interest, and penalties with the state treasurer's office,

c. Initiating routine legal actions such as the filing of liens, garnishments, and bankruptcies,

d. Conducting investigations on Federal Unemployment Tax Act (FUTA) discrepancy problems, contractor registration issues, business closings, and claimant requests for omitted wage credits, and

e. Determining employer/employee and independent contractor relationship issues.

21.1(3) *Integrity bureau.* The integrity bureau consists of the following three distinct work units:

a. Investigations and recovery unit. The investigations and recovery unit was established to prevent, detect, investigate, and penalize unemployment insurance benefit fraud. The unit verifies whether aliens are entitled to unemployment insurance and investigates and disqualifies those who are not eligible, conducts the fictitious employer detection program to discover employers set up for the purpose of fraudulent activities, and investigates and determines whether an unemployment insurance warrant has been forged and whether it should be reissued.

b. Benefits collections unit. The benefits collections unit is responsible for benefit overpayment recovery, including the collection of benefit overpayments and penalties; initiating routine legal actions similar to those of the tax bureau; and utilizing state and federal programs to access claimants' Iowa and federal income tax refunds, Iowa lottery prizes, and Iowa vendor payments.

c. Quality control unit. The quality control unit works to support the development and execution of corrective action plans for the improvement of the unemployment insurance program. The unit is responsible for the collection and analysis of data pertaining to the accuracy of unemployment insurance benefit payments and denial determinations, validation of the unemployment insurance data reports,

identification and analysis of risk factors that could threaten the unemployment insurance program, and maintenance of the data-processing capabilities to store and transmit various agency-required reports to the federal government.

This rule is intended to implement Iowa Code chapter 96.

[**ARC 8359C**, IAB 11/13/24, effective 12/18/24]

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[Filed ARC 8359C (Notice ARC 8216C, IAB 9/18/24), IAB 11/13/24, effective 12/18/24]

CHAPTER 22
EMPLOYER RECORDS AND REPORTS

[Prior to 9/24/86, Employment Security [370] Ch 2]
[Prior to 3/12/97, Job Service Division [345] Ch 2]

871—22.1(96) Records to be kept by the employer.

22.1(1) Each employing unit shall maintain, for a period of five years after the calendar year in which the remuneration to which they relate was paid or, if not paid, was due, records evidencing remuneration made by the employing unit and reportable to the department.

22.1(2) Such records shall show with respect to each employee:

a. Name of worker.

b. Social security number.

c. Date on which the employee was hired, was rehired, or returned to work after a temporary layoff and the date on which the employee was separated from work and the reason therefor.

d. Scheduled hours, except for workers without a fixed schedule of hours, such as those working outside of the employer's establishment in such a manner that the employer has no definite knowledge of their working hours.

e. Total wages paid for employment in each period and the date of payment. For all pay periods ending in each quarter, the records must show separately the following: money wages; the cash value of other remuneration, including wages in lieu of notice, bonuses, gifts, and prizes; the nature of payments such as accounts paid to employees as allowance or reimbursement for traveling and other business expenses; and the amounts of such expenditures actually incurred and accounted for by the employees.

f. The state or states, and the name of the Iowa county, if applicable, in which the services are performed. If any of such services are performed outside of this state, employers are subject to 871—subrule 23.24(1).

g. When the pay period covers services performed both in covered employment and in excluded work, the hours and wages for covered employment under the Iowa employment security law, hereinafter referred to as the "Act," and hours and wages for excluded work.

h. The physical worksite at which each employee worked during each pay period that includes the twelfth of each month. If an employee worked at more than one worksite, the worksite at which the majority of the work was performed should be the one on record.

22.1(3) Such payroll records may be preserved by the employer in an electronic format, provided the employer is willing to provide access to such records as may be required by the department.

22.1(4) Any employing unit having its principal place of business outside of Iowa shall maintain payroll records in this state with respect to wages paid to employees who perform some service in this state. An out-of-state employing unit may, with the approval of the department, maintain such payroll records outside the state if the employing unit agrees to furnish the department with a true and correct copy of such payroll records upon request. The department may make estimated reports and payroll listings upon an out-of-state employing unit's failure to maintain said records in Iowa as required.

This rule is intended to implement Iowa Code section 96.11(6)*"a."*

[**ARC 8360C**, IAB 11/13/24, effective 12/18/24]

871—22.2(96) Reports. Each employing unit shall comply with the instructions issued by the department pertaining to the preparation and filing of reports.

This rule is intended to implement Iowa Code section 96.11(1).

[**ARC 8360C**, IAB 11/13/24, effective 12/18/24]

871—22.3(96) Filing employer's contribution and payroll report.

22.3(1) Each employer shall, by the due date, electronically submit contribution and payroll for each quarter listing wages paid with respect to all the employer's business maintained within this state computed in accordance with the Iowa Code and these rules.

22.3(2) A copy of each such report shall be preserved by each such employer for a period of at least five years from the end of the calendar year in which the report was due.

22.3(3) Every qualified or subject employer is required to file contribution and payroll each quarter, even if an employer finds that for some particular quarter no contributions are due or the employer has no employees during the period covered.

22.3(4) Combined reports, leased employees, and concurrently employed individuals.

a. Consolidated or combined reports of parent and subsidiary corporations or other employing units, whether or not the employing units are related, are not permitted.

b. Employees of parent and subsidiary corporations or other employing units, whether or not they are related, shall be reported on the quarterly reports of the employing unit for which the services are performed regardless of which employing unit actually issues the employees' paychecks.

c. Leased employees.

(1) Except as described in subparagraphs 22.3(4)*"c"*(2) through 22.3(4)*"c"*(5), individuals leased from an employee leasing company, by the client of the employee leasing company, shall be considered to be employed by the client and shall be reported on the quarterly reports of the client, at the contribution rate of the client, unless and until it is shown to the satisfaction of the department that the individuals are and will continue to be under the exclusive direction and control of the employee leasing company, both under a written contract and in fact.

In order for a contract to be considered evidence that individuals are the employees of the employee leasing company, the contract shall:

1. Specify the service to be performed by the individuals, on behalf of the employee leasing company, for the client.

2. Specify the fee the client must pay for this service. The fee must be large enough to cover the actual cost of the individuals' wages and fringe benefits plus provide a reasonable profit on the service performed for the client.

3. Specify that the employee leasing company has the exclusive right to determine the number of individuals needed to provide the service for the client and to direct and control the individuals in the performance of the service.

4. Specify that the employee leasing company has the exclusive right to hire, fire, discipline, and reassign any of the individuals to another position or to another client without the consent of the client.

(2) If an individual is leased to fill a temporary need from a company whose business is primarily to provide workers to fill temporary needs, the individual shall be considered to be the employee of the leasing company as long as a written contract is in place.

(3) If an individual is a truck driver leased from a company that leases truck tractors with drivers to trucking companies, the individual shall be considered to be the employee of the leasing company unless and until it is shown to the satisfaction of the department that the trucking company has the exclusive right to hire, fire, discipline, reassign, and direct and control the services performed by the individual, both under a written contract and in fact.

(4) If an individual leased from an employee leasing company is a corporate officer of the client, the individual shall always be considered the employee of the client and not the employee of the leasing company.

(5) If an individual leased from an employee leasing company holds an exempt relationship, as described in Iowa Code section 96.1A(16)*"g,"* with the client, the individual shall not be considered to be an employee of either the client or the leasing company unless an election to cover the individual has been filed and approved in accordance with Iowa Code section 96.8(3)*"b."*

d. Concurrently employed individuals.

(1) Except as described in subparagraph 22.3(4)*"d"*(2), individuals who perform services concurrently for more than one employing unit, whether or not the employing units are related, shall be considered as working for each of the employing units and shall be reported on the quarterly reports of each of the employing units. Each of the employing units shall be required to pay contributions on the wages attributable to that employing unit up to the taxable wage base limit for each calendar year.

(2) An individual who concurrently performs services as a corporate officer for two or more related corporations and who is paid through a common paymaster that is one of the related corporations may be treated as working for only the common paymaster at the discretion of the related corporations.

22.3(5) The employer's contribution and payroll report shall include:

a. The social security number of, name (last name first) of, and total wages paid to each employee during the calendar quarter. All corrections to previous reports must be submitted electronically. All employees' wages will be reported by the reporting unit under which the work was performed.

b. Wages paid. The electronic system will calculate the taxable wages for each employee, contribution, interest, and penalty due for the calendar quarter and provide the employer with the sum of the total and taxable wages paid to all employees during the calendar quarter. If the employer is claiming taxable wages reported to another state, the amount claimed and the state that the wages were reported to will be listed.

c. The amount of extraordinary pay that was paid to the employees during the calendar quarter for each reporting unit.

d. The total number of employees who were paid wages during the pay periods that include the twelfth day of each month of the calendar quarter for each reporting unit.

e. The number of the county in which the reporting unit is located if only one business activity is conducted at only one worksite during the calendar quarter; however, if the same business activity is conducted at more than one worksite or if different business activities are conducted at one or more worksites, the employer shall include for each worksite the total number of employees paid wages during the pay periods that include the twelfth day of each month of the calendar quarter and the total wages paid during the calendar quarter. The system will compute and enter taxable wages.

The total number of employees paid wages during the pay periods that include the twelfth day of each month of the calendar quarter for all worksites should equal the total number of employees reported for that month.

f. The reason for the increase or decrease in total employment during the calendar quarter.

g. The electronic signature of the owner, responsible officer, or authorized agent of the employer certifying that the information given is true and correct to the best of the signer's knowledge and belief; the date the report was submitted; and the telephone number of the signer.

h. Such other schedules or reports as may be required, duly completed in all substantial respects on such forms and in accordance with instructions provided or approved by the department.

i. The amount of net remittance due. If the amount of net remittance due is less than $1, the employer need not submit payment. The system will compute and enter the net remittance due.

j. The total number of employees on the report, which will be computed and entered by the system.

This rule is intended to implement Iowa Code sections 96.1A(15), 96.7, 96.11(6), and 96.11(11).

[**ARC 8360C**, IAB 11/13/24, effective 12/18/24]

871—22.4(96) Reporting of earnings data by secure file transfer.

22.4(1) An employer, agent, or third-party administrator may submit an electronic file. Authorization for this reporting method will be given if the submitting party meets the department's technical specifications, which will be furnished upon request.

22.4(2) The electronic file submitted must contain, for each reporting unit, all of the required employer information, wage information, and labor market information. Adjustments to prior submitted reports should be submitted electronically via the system application.

22.4(3) The director shall annually designate the number of wage lines per report that will require the report to be filed electronically.

This rule is intended to implement Iowa Code section 96.11(6)*"a."*

[**ARC 8360C**, IAB 11/13/24, effective 12/18/24]

871—22.5(96) Filing of quarterly contribution and payroll by newly subject or covered employers. Any employing unit that becomes an employer subject to this chapter within any calendar quarter other than by a voluntary election of the employing unit shall file contribution and payroll for each calendar quarter. Payroll includes all wages paid during the current quarter as well as separate quarterly reports for wages paid in prior quarters of the same calendar year. The first quarterly reports are due on the last day of the calendar month following the close of the calendar quarter in which the employing unit becomes

subject to the Act. Any employer filing a voluntary election for coverage must begin filing reports in the quarter the employer's election is effective.

This rule is intended to implement Iowa Code sections 96.7(1), 96.8(3), 96.14(1), and 96.14(2).

[**ARC 8360C**, IAB 11/13/24, effective 12/18/24]

871—22.6(96) Employer changing status, address or name required to file report. Any employer that terminates business for any reason whatsoever; transfers or sells all or a substantial part of the assets of the organization, trade or business to another; or changes the trade name of such business or address thereof shall, within ten days, provide electronic notification to the department of such change, including the former name and address of the business; the new name, telephone number, and address; the name of any new owner; and the employer's own name, telephone number, and present address.

This rule is intended to implement Iowa Code sections 96.8(4) and 96.11.

[**ARC 8360C**, IAB 11/13/24, effective 12/18/24]

871—22.7(96) Exempt employing units and exempt employment.

22.7(1) The department may request, and the employing unit having workers performing services for the unit who the unit considers exempt from this Act may file, Form 68-0192, Questionnaire for Determining Status of Workers, along with supporting exhibits and documents to enable the department to determine whether an exemption exists.

22.7(2) Any employing unit exempt under this Act or for whom certain employment performed is not subject to contributions shall immediately notify the department of any changes that may impact the exemption, including the character of its organization, the purposes and manner of its operation, or the changed manner in which employment is performed.

22.7(3) The burden is on the employer to prove the exemption claimed.

This rule is intended to implement Iowa Code section 96.1A(16)*"f."*

[**ARC 8360C**, IAB 11/13/24, effective 12/18/24]

871—22.8(96) Subject employers.

22.8(1) Whenever an employing unit is in doubt as to whether or not an individual is an employee or is engaged in employment subject to the Act, the department may request and the employing unit shall submit Form 68-0192, Questionnaire for Determining Status of Workers.

22.8(2) The department will maintain a separate account for each employer and notify the employer of any status change. This notice will advise the employer of:

a. The effective subjectivity date.

b. The date of the determination.

c. The assigned industry code.

d. The section of the law under which the employer was found liable.

e. The federal identification number (if available).

f. The workforce development unemployment insurance account number.

g. The contribution rate for that year and preceding four years, if applicable.

h. Whether the account was new, reestablished or inactive.

22.8(3) An appeal of an employer liability determination may be perfected according to rules 871—23.52(96) through 871—23.56(96).

This rule is intended to implement Iowa Code section 96.7(4).

[**ARC 8360C**, IAB 11/13/24, effective 12/18/24]

871—22.9(96) Registration of employing units to determine liability.

22.9(1) Each employing unit doing business in the state of Iowa, within 30 days of commencing business in the state in any manner whatsoever, whether by succession to a business already being operated, by starting a new business, or otherwise, shall inform the department and complete a registration.

22.9(2) The registration shall provide the department with the following:

a. The names and addresses of the owners of the business, or if a corporation, association, or joint stock company or limited liability company, the names and addresses of its officers or members.

b. The employing unit's principal place of business, the nature of its business, the number of individuals whom it customarily hires to perform services for it, the place or places where such services are performed, the time when such business was begun, the number of weeks in the year for which it is customary to operate such business, and such other information as may be required.

22.9(3) The employing unit must also file contribution and payroll for all reporting units, if applicable.

This rule is intended to implement Iowa Code section 96.11(1).

[**ARC 8360C**, IAB 11/13/24, effective 12/18/24]

871—22.10(96) Report of a partnership on change in partners.

22.10(1) If a partnership alters its ownership structure and the Internal Revenue Service does not require the partnership to obtain a new federal identification number, the partnership has ten days to notify the department of the change. The department will subsequently update the partnership account to reflect this change.

22.10(2) If the Internal Revenue Service requires the partnership to obtain a new federal identification number, or if there has been a change of ownership as described in Iowa Code section 96.1A(16)*"b"* or rule 871—23.28(96), then the old partnership has ten days to electronically file the change of ownership with the department and to complete a registration.

This rule is intended to implement Iowa Code section 96.11(6).

[**ARC 8360C**, IAB 11/13/24, effective 12/18/24]

871—22.11(96) Employer account.

22.11(1) An employer that has more than one establishment or business is considered to be one employing unit entitled to one account and a single experience rate. If an establishment or business owned by an employer is a separate legal entity in its own right (i.e., a subsidiary corporation), it will be considered to be a separate employer with its own experience rate. When an already covered employer acquires another establishment or business, the employer will have a separate account number with a separate experience rate for the acquired business only if that business retains its character as a separate legal entity. If the acquired business is merged with that of the employer so that they become a single legal entity under the law, the successor is not entitled to separate rates for each establishment or business.

22.11(2) Each employer shall report all wages paid and pay all contributions into the unemployment account maintained by the department. The title of the employer's account shall be the name of the employing unit and may contain its trade name. Where the employing unit is a fiduciary agent or legal representative, the title of the account will be the name of the fiduciary or legal representative and the official title.

22.11(3) The department shall assign each employer's account a number that may only be changed if the system of numbering accounts is changed.

22.11(4) As used in this rule, "establishment" means an economic unit, generally at a single physical location, where business is conducted, where services or industrial operations are performed, or from which employees are dispatched.

This rule is intended to implement Iowa Code sections 96.1A(15) and 96.7(2)*"a"*(1).

[**ARC 8360C**, IAB 11/13/24, effective 12/18/24]

871—22.12(96) Reporting units. Any employer having two or more separate establishments will file those establishments as separate reporting units. Additionally, at the employer's discretion, the employer may establish reporting units to report according to function within the business. When filing employer's contribution and payroll, all reporting units will be submitted together unless the department authorizes otherwise. The submission is not complete until all reporting units are completed. It is the responsibility of the employer to maintain current status for the reporting units, and if any reporting units are deleted or added, the employer must notify the department within ten working days from the date of change.

This rule is intended to implement Iowa Code sections 96.1A(6) and 96.7(2)*"a."*

[**ARC 8360C**, IAB 11/13/24, effective 12/18/24]

871—22.13(96) Procedure to be followed by an employer wishing to have an active reporting unit coded for notice of claim for unemployment benefit mailing.

22.13(1) Any employing unit reporting under an assigned account and having one or more reporting units in the state may request a reporting unit number for the specific purpose of receiving a Notice of Claim Filing so that the employing unit may make a timely protest if the employment separation was for a disqualifiable reason. Those accounts so wishing may request that all unemployment insurance material other than the Notice of Claim Filing be sent to the home office or regional accounting office. All such requests must be from a responsible financial or operating officer of the firm and must indicate:

a. The full trade name and address of each location to be coded.

b. The full employer name and address of the home office or financial office where all unemployment insurance material other than the Notice of Claim Filing is to be sent.

22.13(2) Qualified personnel in the tax bureau may accept this information over the telephone provided that the employer makes known all of the above requested information and the person receiving this information notes the date it was received, the time it was received, who telephoned the information to the department, and the name and telephone number of a responsible party that can be contacted if further verification is needed with respect to the location coding procedure. Tax bureau personnel receiving this classified information by telephone will accordingly note this and make it a matter of permanent record.

This rule is intended to implement Iowa Code section 96.6(2).

[**ARC 8360C**, IAB 11/13/24, effective 12/18/24]

871—22.14(96) Notification by employer of employee's rights. Notification is in accordance with Iowa Code section 96.11(2).

This rule is intended to implement Iowa Code section 96.11(2).

[**ARC 8360C**, IAB 11/13/24, effective 12/18/24]

871—22.15(96) 940 certification.

22.15(1) Upon request, the department shall furnish to the Internal Revenue Service a certification of an employer's account for a particular year. Certification requests may be on an individual basis or may be part of a bulk yearly certification. Such certification will include the employer's state account number, yearly taxable payroll, contribution rate, contributions paid prior to January 31 of the next succeeding year, and the date and amount of contributions after January 31 of the next succeeding year.

22.15(2) In addition to the information certified in subrule 22.15(1), yearly certification shall include:

a. Employers that filed a federal unemployment tax return (Form 940) that did not file with the department.

b. Employers that filed returns with the department but not with the Internal Revenue Service, except governmental employers and employers that department records indicate to be 501(c)(3) nonprofit organizations.

This rule is intended to implement Iowa Code sections 96.11(1) and 96.11(6)*"c"*(2).

[**ARC 8360C**, IAB 11/13/24, effective 12/18/24]

871—22.16(96) Electronic transmittal of contribution payments. Employing units must transmit payment of contributions to the department electronically.

This rule is intended to implement Iowa Code sections 96.7(1) and 96.14(2).

[**ARC 8360C**, IAB 11/13/24, effective 12/18/24]

871—22.17(96) Procedures of field auditors.

22.17(1) Field auditors are to provide a cost-effective method of promoting employers' understanding of employer rights and responsibilities under Iowa unemployment insurance laws.

22.17(2) The department, through duly appointed field auditors, may examine an employer's records at any reasonable time to determine compliance with the Act.

22.17(3) The department has enforcement authority. An employer, when requested to produce records by an auditor, must make the records available. If an employer does not comply with the auditor's request to produce records, a subpoena duces tecum may be served on the employer.

22.17(4) The department, through duly appointed field auditors, may perform a systematic audit of an employer's records as authorized by Iowa Code section 96.11(7) and as mandated by the United States Department of Labor. In addition to the provisions of subrules 22.17(1) through 22.17(3), the following provisions apply to systematic audits:

a. The employer is to be given reasonable notice of the intent to audit, and a preaudit interview, typically in the form of a preaudit questionnaire, is to be conducted with the employer or a designated representative.

b. The records required, if maintained, may include individual pay records, Internal Revenue Service Forms W-2 and 1099, cash disbursement journals, check registers, general ledgers, balance sheets, profit and loss statements, federal and state tax returns, and other records to the extent they relate to possible hidden or misclassified wages.

c. To verify the existence of the business, the auditor may require a visit to the business premises or request other evidence of legitimate business activity.

d. To verify the correct business entity is listed on department files, the auditor may examine various employer business licenses, legal documents or other tax returns.

e. To verify the reporting of all workers reportable to the department under the Act, questionable entries will be investigated and documented. If the employer disagrees with the audit decision on coverage of a worker, the auditor may require the employer to complete Form 68-0192, Questionnaire for Determining Status of Workers. In any disputed case, the auditor is to be granted access to records as necessary to determine the remuneration paid for any given calendar quarter.

f. To verify proper employer posting to department reports, a detailed audit of check stubs or other maintained source documents will be made and documented for at least one worker for at least one quarter. The detailed audit may be more comprehensive at the discretion of the auditor or if discrepancies are found.

g. Employer records will be compared and reconciled to amounts reported to the department on contribution and payroll reports and audit findings documented.

h. Discrepancies will be resolved or explained, and report adjustments prepared, as necessary.

i. The audit will cover four calendar quarters; however, if material errors are found, the audit may be expanded to cover prior or subsequent years subject to limitations of subrule 22.1(1).

j. Additional amounts due will be calculated and collected, including applicable interest and penalties, or an explanation will be given.

k. Upon completion of the audit, the department will communicate the results to the employer or designated representative. An audit report with all worksheets, adjustments, and reports will be retained by the department.

22.17(5) There are several other reasons department representatives may make employer contacts and demands under authority of this rule. Any of these activities may be expanded into a systematic compliance audit as described in subrule 22.17(4) upon approval of the duly authorized representative of the department.

a. An auditor may request to examine business records to determine the date employment began and the date the employing unit became subject to the Act.

(1) To determine whether an employing unit is to be a covered employer and whether an individual, or class of individuals, is an employee whose remuneration would be subject to contributions, the auditor will examine employment contracts and related documents.

(2) If it is determined that the employing unit is to be a covered employer, the auditor will examine legal documents such as leases, purchase contracts, partnership agreements, articles of incorporation, limited liability operating agreements, and stock records to determine ownership of the business; to establish responsibility for filing reports and paying contributions; and to assist in the determination of the unemployment insurance tax rate.

(3) If liability is determined, the payroll/remuneration records may be examined to establish the correct amount of covered wages and the period to which they belong. Reports will be completed; the correct amount of contribution, penalty, and interest due will be computed; and collection action will be initiated.

b. When an unemployment insurance claim is filed, an auditor may request to examine the records of an employer to establish the claimant's rights to benefits under the Act. Form 68-0192, Questionnaire for Determining Status of Workers, and supporting documents may be required in contested cases. If the department determines that the claimant is an employee, the records will be examined to determine the correct amount of wages paid to the claimant and the period to which the wages apply.

c. When an employer fails or refuses to file contribution and payroll, the auditor may examine the records to determine the correct amount of wages that should be reported and may compute and collect contributions, penalty, and interest due. Should records not be made available, the auditor may estimate the wages paid and amounts due pursuant to 871—subrule 23.59(2).

d. When an employer is delinquent in paying contributions due, the auditor may examine records including cash accounts, accounts receivable, real and personal property accounts, accounts payable, notes payable, installment contracts, and mortgages payable to determine the employer's equity in the assets on which a lien may be filed and judgment obtained.

22.17(6) When a temporary writ of injunction has been filed by the department against an employer because of the employer's failure or refusal to file a required report or to pay assessed contributions, penalty, and interest, a field auditor may inspect the enjoined business premises during reasonable hours and interview any interested parties having knowledge of or being involved with the enjoined employer to ensure that such enjoined employer and all of the employer's agents, servants, employees, and assigns are observing the conditions of the temporary writ of injunction.

This rule is intended to implement Iowa Code sections 96.7(1), 96.7(3), 96.8(1), 96.11(1), 96.11(6) *"a,"* 96.11(7), 96.14, 96.16 and 96.20(3).

[**ARC 8360C**, IAB 11/13/24, effective 12/18/24]

871—22.18(96) Agents and other practitioners or firms representing employers in unemployment insurance matters.

22.18(1) An agent, tax practitioner, accounting firm, attorney or any other firm or individual that represents or intervenes on behalf of an employer in any unemployment insurance matter must file with the department:

a. A power of attorney, or

b. A letter of authorization from the employer, or

c. An electronic designation of authority from the employer.

22.18(2) The foregoing documents must contain:

a. Employer's full legal name, address, and account number.

b. Employer doing business as (DBA) or trade name, if any.

c. Legal name, address, telephone number and federal employer identification number (FEIN) of the agent or firm representing the employer.

d. Employer's email address.

e. Address of the designated agent.

f. Roles that the agent or firm is authorized to perform for the employer.

g. Signature of the employer.

This rule is intended to implement Iowa Code section 96.11(7).

[**ARC 8360C**, IAB 11/13/24, effective 12/18/24]

871—22.19(96) Notification of availability of unemployment insurance. Upon an employee's separation from employment, an employer must provide to the employee documentation informing that:

22.19(1) Unemployment insurance benefits are available to workers who are unemployed and who meet the state's eligibility requirements;

22.19(2) Employees may file a claim in the first week that employment stops or work hours are reduced;

22.19(3) Employees may file claims online at iowaworks.gov; and

22.19(4) Employees must provide the department with the following information to process the claim:

a. Full legal name;

b. Social security number;
c. Authorization to work (if the employee is not a U.S. citizen or resident);
d. Last employer name and address;
e. Start and end dates of the employee's last employment; and
f. Additional information upon request of the department.

This rule is intended to implement Iowa Code chapter 96 and the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136).

[**ARC 8360C**, IAB 11/13/24, effective 12/18/24]

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CHAPTER 23
EMPLOYER'S CONTRIBUTION AND CHARGES

[Prior to 9/24/86, Employment Security[370]]
[Prior to 3/12/97, Job Service Division [345] Ch 3]

871—23.1(96) Definitions.

23.1(1) *Accounts.*

a. Benefit payment account. An account maintained in the unemployment compensation fund in which are recorded (1) amounts transferred from the unemployment trust fund in the United States treasury, and receipts from other sources, and (2) amounts of benefits paid.

b. Employer rating account. An account of an employer which is maintained by the department for the purpose of reporting wages and recording contributions or reimbursements for that employer.

c. Clearing account. An account maintained in the unemployment compensation fund in which are recorded all amounts payable under Iowa Code chapter 96, including those to be transferred to (1) the unemployment trust fund, (2) the special employment security contingency fund, (3) the administrative contribution surcharge fund, and (4) the temporary emergency surcharge fund. Employer refunds are issued from this account.

d. Balancing account. An account set up to receive benefit charges that by law are not chargeable to any employer. The purpose of the balancing account is to enable the department to properly account for all benefits paid out.

23.1(2) *Average annual taxable payroll.* The average of the total amount of taxable wages paid by an employer for insured work during the five periods (three or two periods for governmental contributory employers) of four consecutive calendar quarters immediately preceding the computation date.

23.1(3) *Calendar quarter.* The period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31 of each year.

23.1(4) *Computation date.* The date as of which employers' experience with respect to unemployment or unemployment risk is measured for the purpose of determining contribution rates.

23.1(5) *Employer's contribution and payroll report.* An employer's quarterly report of the wages paid to individual workers, the total and taxable wages paid and the amount of contributions due to a state unemployment insurance fund.

23.1(6) *Contributions.* Payments required by a state employment security law to be made to the state unemployment fund by reason of insured work but does not include reimbursement payments of nonprofit organizations or governmental entities in lieu of contributions.

23.1(7) *Contributor rate.* The percent constituting the rate at which the employer's payroll is taxed.

23.1(8) *Employer.* An employer subject to the employment security law of Iowa who is liable for contributions and subject to the experience rating provisions of the law or is liable for reimbursement payments in lieu of contributions. (See Iowa Code section 96.19(16).)

23.1(9) *Experience.* An employer's record with respect to contributions paid, benefits charged, and taxable wages reported.

23.1(10) *Experience rating.* A method for determining the contribution rates of individual employers on the basis of the factors specified in the state employment security law for measuring employers' experience with respect to unemployment or unemployment risk.

23.1(11) to **23.1(13)** Reserved.

23.1(14) *Federal unemployment tax.* The tax imposed by the Federal Unemployment Tax Act on employers with respect to having individuals in their employ.

23.1(15) *Federal Unemployment Tax Act.* Subchapter C of Chapter 23 of the Internal Revenue Code which relates to the federal unemployment tax.

23.1(16) *Federal unemployment tax return.* A report by an employer to the Internal Revenue Service of the amount of federal unemployment tax due and payable with respect to wage payments to workers during the calendar year.

23.1(17) Reserved.

23.1(18) *Funds.*

a. Administrative contribution surcharge fund. A special fund in the state treasury, established by state law, as a repository for an employer surcharge levied to meet the operational cost of certain state workforce development offices. Referred to in subrule 23.40(2).

b. Administrative funds. Funds made available from federal, state, local and other sources to meet the cost of state workforce development administration.

c. Contingency fund. An amount of money appropriated by Congress to meet certain unpredictable increases in costs of administration by the state workforce development divisions arising from increases in workload or other specified causes.

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

e. Special employment security contingency fund. A special fund in the state treasury, established by state law, for moneys received from employers in payment of interest and penalties on delinquent contributions and reports.

f. Temporary emergency surcharge fund. A special fund in the state treasury, established by state law, for use in the event an employer surcharge is levied to pay interest on a federal government loan to the unemployment compensation fund. Referred to in subrule 23.40(3).

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

h. Unemployment compensation fund. A special fund established under an employment security law for the receipt and management of contributions and the payment of unemployment insurance benefits. Included in this fund are moneys in the benefit payment account, clearing account, and unemployment trust fund account.

i. Unemployment trust fund. A fund established in the treasury of the United States which contains all moneys deposited with the treasury by the 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.

23.1(19) *Indian tribe.* Indian tribe has the same meaning given to the term by Section 4(e) of the federal Indian Self-Determination and Education Assistance Act, and shall include any subdivision, subsidiary, or business enterprise wholly owned by such an Indian tribe.

23.1(20) to **23.1(23)** Reserved.

23.1(24) *Liability determination.* A determination as to whether an employing unit is a subject employer and whether services performed for it constitute employment as defined under the employment security law.

23.1(25) *Liability report.* A report required of all employing units in a state, which gives the information on which the state employment security agency bases its determination as to whether the employing unit is liable under the state employment security law.

23.1(26) *Subject employer.* An employing unit which is subject to the contribution provisions of a state employment security law.

23.1(27) *Tax.* (See "Contributions.")

23.1(28) *Unemployment compensation fund.* The unemployment compensation fund established by this chapter to which all contributions or payments in lieu of contributions are required to be deposited and from which all benefits provided under Iowa Code chapter 96 shall be paid. (See "Funds.")

23.1(29) Reserved.

23.1(30) *Quarterly wage report.* A report that generates after the employer has electronically submitted its quarterly contribution and payroll.

23.1(31) *Quarterly wage detail.* A report listing workers and their wages by social security number.

This rule is intended to implement Iowa Code sections 96.7(2)*"c"*(3), 96.7(7)*"b,"* 96.11(1) and 96.19(1).

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

871—23.2(96) Definition of wages for employment during a calendar quarter.

23.2(1) Unless the context otherwise requires, terms used in rules, forms, and other official pronouncements issued by the department shall have the following meaning:

23.2(2) Wages paid. Wages for employment during a calendar quarter consist of wages paid during the calendar quarter. Wages earned but not paid during the calendar quarter shall be considered as wages for employment in the quarter paid. The employer's contribution and payroll shall be used as prima facie evidence of when the wages were paid. If the wages are not listed, they shall be considered as paid:

a. On the date appearing on the check.

b. On the date appearing on the notice of direct deposit.

c. On the date the employee received the cash payment.

d. On the date the employee received any other type of payment in lieu of cash.

23.2(3) Wages payable means wages earned and unpaid. (See section 96.19(41).)

23.2(4) Wages is the name by which the remuneration for employment is designated and the basis on which the remuneration is paid is immaterial. It may be paid in cash or in a medium other than cash, on the basis of piece work or percentage of profits, commission, or it may be paid on an hourly, daily, weekly, monthly or annual basis. Remuneration paid in goods or services shall be computed on the basis of the fair value of the goods or services at the time of payment.

23.2(5) When the cash 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 specially determined by the department or the rates prescribed herein, shall be deemed the cash value of the board and lodging.

23.2(6) Cash value of room and board.

a. 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 Iowa Code section 96.19(18), the reasonable cash value of same shall be deemed wages subject to contribution.

b. 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 paragraphs *"d"* and *"e"* of this subrule.

c. 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 paragraph *"d"* of this subrule.

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

d. 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 paragraph *"c"* of this subrule, or in the contract of hire do not properly reflect the reasonable cash value of such remuneration.

e. If the department determines that the reasonable cash value is other than prescribed in a contract of hire or in paragraph *"c"* of this subrule, the employer's payroll and contribution reports to the department shall thereafter show the value of such remuneration as determined by the department.

f. Notwithstanding the provisions of this paragraph, the cash value of meals which are provided by and for the convenience of the employer on the business premises of the employer shall not be deemed as insured wages under chapter 96 of the Iowa Employment Security Law. Lodging furnished by the employer, for the convenience and on the business premises of the employer, shall not be considered wages if the employee is required to accept the lodging as a condition of employment.

This rule is intended to implement Iowa Code section 96.19(41).

[**ARC 3342C**, IAB 9/27/17, effective 11/1/17; **ARC 3402C**, IAB 10/11/17, effective 11/15/17]

871—23.3(96) Wages.

23.3(1) *"Wages"* means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. Wages also means wages in lieu of notice, separation allowance, severance pay, or dismissal pay. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rule 871—23.2(96).

23.3(2) The term "wages" shall not include:

a. Subsistence payments. The amount of payment made by an employer to its employee, which is in addition to the employee's regular wages and is paid for the sole purpose of compensating the employee for expenses inherent in the performance of services by the employee away from the regular base of operation of the employer and employee, commonly referred to as subsistence pay.

b. Travel and other ordinary and necessary expenses. Amounts paid specifically for travel or other ordinary and necessary expenses incurred or reasonably expected to be incurred in the employer's business are not wages. Travel and other reimbursed expenses must be identified either by making a separate payment or by specifically indicating the separate amounts if both wages and expense allowances are combined in a single payment.

c. Employer's payments to persons performing military services. Cash payments, or the cash value of other remuneration, made voluntarily and without contractual obligation to, or in behalf of, an individual for periods during which such individual is in active service or training as a member of the national guard, or the military or naval forces of the United States, including the organized reserves.

d. Sick pay.

(1) "Wages" shall not include any amounts paid as sick pay if the payments are made by or on behalf of an employer under a plan or system. The plan or system must provide sick pay for the employees of the employer or a class or classes of the employer's employees. The plan may include dependents.

(2) In the absence of a plan or system any amounts paid by or on behalf of an employer on account of sickness shall not be included after the expiration of six calendar months following the last calendar month in which the employee worked for such employer.

e. Supplemental unemployment benefit plan (SUB). The term "wages" shall not include the amount of any payment by an employing unit for or on behalf of an individual in its employ, under a plan or system established by such employing unit, with approval of the department. Such plan or system must make provision for payment to a trust fund or similar account on behalf of individuals performing services for it. The account must be used to pay supplemental unemployment benefits to such employing unit's employees over and above any sum to which such employees might be entitled under the provisions of the state employment security law. Such payments to employees are not remuneration for the purposes of reducing or preventing payment of unemployment benefits. Such plan shall contain the following features:

(1) The employer pays into a separately established trust fund or similar account an amount per hour (or amount equivalent) worked by the employees covered by the agreement until the maximum amount called for has been reached. The plan specifically provides for the supplementation of unemployment benefits under the written terms of an agreement, contract, trust arrangement, or other instrument.

(2) These payments made by the employer into the trust fund or similar account are not subject to recovery by the employer before the satisfaction of all liabilities to employees covered by the plan.

(3) The trust fund or similar account is to be used to pay supplemental unemployment benefits to employees over and above any sum to which they might be entitled under the provisions of a state employment security law.

(4) That the agreement shall provide that such employee is not entitled to receive any payment from the trust fund or similar account unless the employee is also concurrently eligible for benefits under a state employment security law.

(5) The plan requires that benefits are to be determined according to objective standards. Thus a plan may provide similarly situated employees with benefits which differ in kind and amount, but may not permit such benefits to be determined solely at the discretion of the administrator of the fund.

(6) That the employee has no vested right in any of the moneys paid into the trust fund or similar account except as the employee may qualify for benefits under the terms of the agreement.

(7) That any payment made to or on behalf of an employee be from and to a trust fund or similar account described in Section 401(a) of the United States Internal Revenue Code title 26 of 1970 which is exempt from tax under Section 501(a) of said Code.

(8) The employer shall seek approval of its plan by petitioning that its plan be designated as a supplemental unemployment benefit (SUB) plan in the manner provided for petitioning for a declaratory ruling. The employer should include a written copy of its plan in the petition for declaratory ruling. The department will respond in the manner provided for declaratory rulings.

f. Officers of corporation. The term "employment" shall not include wages paid to an officer of corporation if such officer is a majority stockholder:

(1) Unless such services are subject to a tax to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund; or

(2) If such services are required to be covered under this chapter of the Code as a condition to receiving a full tax credit against the tax imposed by the Federal Unemployment Tax Act (FUTA) (26 U.S.C. 3301-3309).

g. Remuneration paid by state or political subdivision. The term "employment" shall not include wages paid by this state or any of its political subdivisions or by an Indian tribe to:

(1) An elected official,

(2) A member of a legislative body,

(3) A member of the judiciary of a state or political subdivision,

(4) A member of the state national guard or air national guard,

(5) An employee serving on a temporary duty basis for fire, storm, snow, earthquake, flood, or similar emergency, or

(6) A person serving in a nontenured policymaking capacity or advisory capacity pursuant to state law which ordinarily does not require duties of more than eight hours per week.

See rule 871—23.71(96) for further definition of exemptions (1) through (6).

h. Sole proprietorship or partnership drawing accounts. The term "wages" shall not include any of the following:

(1) Any amount of personal compensation withdrawn by a bona fide sole proprietor from the business or profession.

(2) Any amount of personal compensation withdrawn by a bona fide partner or partners from their partnership entity.

(3) Remuneration for services which are paid by a limited partnership to a limited partner is reportable. If a limited partner performs the duties of a general partner, remuneration is considered to be exempt.

i. Payments into 401K and other deferred compensation plans. Payments made by an employer to a deferred compensation plan, established to provide for an employee's retirement, are not wages subject to contributions unless the payments were deducted from the employee's pay through a salary reduction agreement. In circumstances where both the employer and the employee contribute to the plan, the employer's share is not wages unless the employee would receive a cash payment if the employee chose not to participate in the plan.

j. Remuneration paid to members of limited liability companies based on membership interest. The term "wages" shall not include remuneration paid to a member of a limited liability company based on a membership interest in the company provided that the remuneration based on membership interest is allocated among members, or classes of members, in proportion to their respective investments in the

company. The term "wages" shall not include any remuneration for services performed in lieu of a contribution of cash or property to acquire a membership interest in the limited liability company. See Iowa Code sections 96.19(18a)(9) and 96.19(41e). If the amount of remuneration attributable to membership interest or the purchase of a membership interest and the amount attributable to services performed cannot be determined, the entire amount of remuneration shall be considered to be based on the services performed.

k. Inmates of correctional institutions. The term "employment" shall not include wages paid for services performed by an inmate of a correctional institution. Persons in work release programs are considered inmates and their wages are not reportable. Remuneration paid to residents of halfway houses is reportable.

23.3(3) The term "wages" shall include:

a. Small business corporation remuneration. Remuneration paid to officers of "subchapter S" corporations for services performed in Iowa shall be deemed to be wages. Any corporate dividends must be approved and recorded in the corporate minutes prior to payment of such dividends. Remuneration to shareholders shall not be deemed to be dividends if such remuneration is paid regularly, either weekly or monthly, and is not in proportion to such shareholder's amount of stock, or in proportion to such shareholder's investment in the corporation. Corporate dividends are not considered wages. Ordinary income distributions as reported on IRS Form K-1 will not be considered to be wages provided that distributions are made proportionate to stock ownership or shareholder's investment, and provided that corporate officers performing services for the corporation have received appropriate remuneration for services performed as defined by the Internal Revenue Service and the remuneration is reported as wages. See paragraph 23.3(2)*"f"* for possible exclusion of wages paid to corporate officers who are majority stockholders.

b. Wages of employees hired with equipment. Where an employee is hired with equipment, except where it is ordinary in custom and usage in the trade or business for employees to furnish such equipment at their own expense, the fair value of the remuneration for the employee's services, if specified in the contract of hire, shall be considered wages. If the contract of hire does not specify the employee's wages, or the value of the wages agreed upon under the contract of hire is not a fair value, the department shall determine the employee's wages, taking into consideration the prevailing wages for similar work under comparable conditions, and the wages thus determined shall apply as wages and be so reported by the employer.

c. Union members. Members of a union, subject to the direction and control of the union and acting on behalf of the union, are considered employees of the union with respect to the services performed. Payments made to them by the union as reimbursement for time lost from their regular employment are considered wages.

d. Cafeteria plans. A cafeteria plan is a set of benefit options offered by the employer to employees or to a class of employees. A particular benefit in a cafeteria plan will be considered to be "wages" subject to contributions (tax) for Iowa unemployment insurance purposes if the employee has the option of receiving a cash payment in lieu of the benefit. If the employee does not have the option of receiving a cash payment, the benefit will still be considered "wages" subject to contributions unless the benefit is specifically excluded from the definition of "wages" in Iowa Code subsection 96.19(41).

e. Personal use of company vehicle. The cash value of personal use of a company automobile or other vehicle is "wages" subject to contributions (tax) for Iowa unemployment insurance purposes and shall be reported to the department as wages paid in the quarter in which the personal use occurred.

This rule is intended to implement Iowa Code sections 96.5(5)*"a,"* 96.19(6)*"a"*(1) and (6), and 96.19(41).

871—23.4(96) Wages—back pay. A payment in the form of or in lieu of back pay to an individual (exclusive of legal fees and other litigation expenses) shall be reported by the employer as total and taxable wages paid to the individual in the quarter in which the employer actually made the payment in the form of or in lieu of back pay. A payment for back pay shall be taxable and recoverable if it meets the definition of wages contained in rule 871—23.3(96). Punitive or liquidated damages for other than lost wages, and job search expenses, are not taxable, recoverable or deductible as a back pay award.

23.4(1) Where the back pay wages, award or a judgment is paid as remuneration for employment by an employer into an account for an individual, the wages, award or judgment shall be considered as wages paid in the quarter in which the employer actually pays the wages, award or judgment to an account for the individual.

23.4(2) If 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, and if the benefits are recovered by the department under an agreement between the employer and the individual allowing the employer to deduct and remit to the unemployment compensation fund the amount of benefits received by the individual from the payment in the form of or in lieu of back pay, the employer shall be required to report this amount to the department as total and taxable wages paid to the individual in the calendar quarter in which the amount is actually paid.

This rule is intended to implement Iowa Code sections 96.7(3) and 96.8(5).

871—23.5(96) Gratuities and tips.

23.5(1) The following criteria shall be applicable in determining whether tips are wages under the contributions provision of the Act: Tips received by an individual from a person or persons other than the individual's employer, and not accounted for to the employer, are not wages unless required by subrule 23.5(2). If the employee makes an accounting to the employer listing the tips received, these tips must be reported to the department as total and taxable wages. Where the customer writes the amount of the tip on a bill and the employer pays the employee the amount so shown and charges it to the customer's account, such amounts are wages. Where the employer adds a certain percent to the customer's bill for disbursement to the employees, the sums so disbursed are wages.

23.5(2) Tips are considered reportable and taxable as wages when taken into account by the employer in determining the employee's compensation under the federal wage and hour law, or when paid by the customer as a service charge set by the employer, or when pooled and distributed to the employees by the employer. The employer shall keep sufficient detailed records so that it can be ascertained, if necessary, by audit or other authorized inspection which compensation is reportable as taxable tips and which compensation is reportable as compensation other than tips. For reporting purposes to the department, the tips and other reportable and taxable compensation may be submitted in aggregate on Form 65-5300, Employer's Contribution and Payroll Report.

23.5(3) An accounting as used in this rule means the reporting of tips as gratuities by an employee to the employer for the purpose of deducting social security taxes or withholding taxes with the employer reporting the same on Form 941, Employer's Quarterly Federal Tax Return.

871—23.6(96) Taxable wages.

23.6(1) *Definition.*

The term *"taxable wages"* means the higher of the federal taxable wage base for the Federal Unemployment Tax Act (FUTA) or 66 2/3 percent of the statewide average weekly wage paid to employees in insured employment, multiplied by 52 and rounded to the next highest multiple of $100 based upon the computation made during the previous calendar year to determine the maximum weekly benefit amounts for unemployment insurance benefits.

23.6(2) *Applicability and successorship.*

a. If an individual has more than one employer, each employer must pay contributions (tax) on the employee's wages up to the taxable wage base.

b. The employer shall not deduct any part of the contributions (tax) due on taxable wages from an employee's pay.

c. Only wages reported to the Iowa unemployment insurance program may be used in computing the employee's reportable taxable wages in Iowa.

d. A successor employer may use the taxable wages paid and reported by the predecessor employer to determine the successor employer's taxable wages if the successor employer received a transfer of experience from the predecessor employer.

e. A successor employer which received a transfer of experience may, at the successor employer's option, use the taxable wages reported by the predecessor to compute the taxable wages for the balance of

the calendar year or may compute the taxable wages as if the employees acquired from the predecessor were new employees.

This rule is intended to implement Iowa Code section 96.19(37).

[**ARC 3647C**, IAB 2/14/18, effective 3/21/18]

871—23.7(96) New employer contribution rates.

23.7(1) A contributory employer means all employers other than employers which have elected, or are required by law, to reimburse the department for benefits paid in lieu of paying contributions. An employer which has earned a "zero" rate is still considered to be a contributory employer.

23.7(2) A nonconstruction contributory employer, which has not yet qualified for an experience rate, shall pay contributions at the rate specified in the twelfth benefit ratio rank but not less than 1 percent until the end of the calendar year in which the employer's account has been chargeable with benefits for 12 consecutive calendar quarters immediately preceding the computation date.

23.7(3) A construction contributory employer, which has not yet qualified for an experience rate, shall pay contributions at the rate specified in the twenty-first benefit ratio rank until the end of the calendar year in which the employer's account has been chargeable with benefits for 12 consecutive calendar quarters.

23.7(4) Once an employer has qualified for an experience rating, the rate will be computed in accordance with the formula given in Iowa Code section 96.7. Rates will vary from 0 percent to 9 percent depending on how each employer's experience compares to the experience of all other employers.

23.7(5) For the purposes of this rule, an administrative contribution surcharge and a temporary emergency surcharge may be added to an employer's contribution rate.

23.7(6) For the purposes of this rule, the first quarter in which an employer's account will be considered chargeable with benefits will be the third quarter of the employer's liability unless the employer paid and reported no wages during the first two quarters of liability. In that case, the employer will not be considered chargeable with benefits until the first quarter in which the employer pays and reports wages. Once an employer's account has been chargeable with benefits it will be considered chargeable for rate computation purposes until it is terminated.

23.7(7) For the purposes of this rule, any single employer which has two or more establishments or businesses engaged in different industrial classification activities, with one or more establishments or businesses engaged in construction activity, as defined in rule 871—23.82(96), shall be assigned the contribution rate applicable to construction if 50 percent or more of the combined business activity is derived from the establishments or businesses engaged in construction activities.

This rule is intended to implement Iowa Code section 96.7.

871—23.8(96) Due date of quarterly contribution and payroll.

23.8(1) *Due date.*

a. Contributions shall become due and be payable quarterly on the last day of the month following the calendar quarter for which the contributions have accrued. If the department finds that the collection of any contributions from an employer will be jeopardized by delay, the department may declare the contributions due and payable as of the date of the finding.

b. If any due date prescribed in this rule falls on a Saturday or Sunday, or a legal holiday, the due date shall be the next following business day. Quarterly wage detail, contributions, and payments in lieu of contributions, if mailed, shall be considered as received on the date shown on the postmark of the envelope in which they are received by the department.

23.8(2) *Regular due date.* Each covered employer subject to Iowa Code section 96.7 shall file with the department quarterly contribution and payroll on or before the due date, and any employer failing to file a quarterly when due shall be delinquent.

23.8(3) *Due date for new employer.* The first contribution payment of any employer who becomes newly liable for contributions in any year shall become due and payable on the last day of the month following that quarter wherein occurred the twentieth calendar week, during the calendar year within which a total of one or more workers were employed on any one day, or the last day of the month following that calendar quarter in which a total of $1,500 in wages was paid. The first payment of such an employer

becoming liable in the course of a calendar year shall include contributions with respect to all wages paid for employment from the first day of the calendar year.

a. The first contribution payment of any agricultural employer who becomes newly liable for contributions in any year will become due and payable on the last day of the month following that quarter wherein occurred the twentieth calendar week, during the calendar year within which a total of ten or more workers were employed on any one day, or the last day of the month following that calendar quarter in which a total of $20,000 in wages was paid. The first payment of such an employer becoming liable in the course of a calendar year shall include contributions with respect to all wages paid for employment from the first day of the calendar year.

b. The first contribution payment of any domestic employer who becomes newly liable for contributions in any year will become due and payable on the last day of the month following that quarter wherein the liability was established, or the last day of the month following that calendar quarter in which a total of $1,000 in wages was paid. The first payment of such an employer becoming liable in the course of a calendar year shall include contributions with respect to all wages paid for employment from the first day of the calendar year.

23.8(4) *Due date for elective coverage.* The first contribution payment of any employing unit which elects with the written approval of such election by the department, to become an employer, or to have nonsubject services performed for it deemed employment, shall become due and payable on the last day of the month next following the close of the calendar quarter in which the conditions of becoming an employer by election are satisfied, and shall include contributions with respect to all wages paid for employment occurring on and after the date stated in such approval (as of which such employing unit becomes an employer), up to and including the calendar quarter in which the conditions of becoming an employer by election are satisfied.

23.8(5) *Due date for newly liable employer.* The first contribution payment of an employer who becomes newly liable for contributions in any year in any other manner shall become due and be payable on the last day of the month next following the quarter wherein such individual or employing unit became an employer. The first payment of such an employer shall include contributions with respect to all wages paid for employment for such individual or employing unit since the first day of the calendar year.

23.8(6) *Delinquent date and penalty and interest.*

a. A quarterly wage detail or contribution payment or payment in lieu of contributions which is not received on or before the due date is delinquent. An employer who fails to file quarterly contribution and payroll on or before the due date shall pay to the department for each such delinquent quarter, subject to waiver for good cause shown, a penalty as provided in Iowa Code section 96.14(2). No penalty shall apply to delinquent quarters when the employer proves to the satisfaction of the department that no wages were paid.

b. An employer who has not paid contributions or payments in lieu of contributions on or before the due date shall pay interest on the whole or part thereof remaining unpaid at the rate of 1 percent per month, or 1/30 of 1 percent for each day or fraction thereof, from and after the due date until payment is received by the department unless good cause is shown why such interest shall be waived.

23.8(7) *Due date upon demand.* If the department finds that the collection of any contribution or payment in lieu of contributions will be jeopardized by delaying the collection thereof until the date otherwise described, upon written demand by the department, such contribution or payment in lieu of contribution shall become immediately payable, and shall become delinquent.

23.8(8) *Extension of time.* Upon written request filed with the department before the due date of any contribution and payroll, the department may, for good cause shown, grant an extension in writing of the time for filing and the payment of the contributions, but no extension shall exceed 30 days and no extension shall postpone payment beyond the last day for filing tax returns under the Federal Unemployment Tax Act. If an employer who has been granted an extension fails to pay the contribution on or before the termination of the period of such extension, interest shall be payable from the original due date as if no extension had been granted.

This rule is intended to implement Iowa Code section 96.7(1).

[**ARC 8711B**, IAB 5/5/10, effective 6/9/10; **ARC 3342C**, IAB 9/27/17, effective 11/1/17]

871—23.9(96) Delinquency notice. Within 20 days from the delinquent date for filing employer's quarterly contribution and payroll, a delinquency notice will be sent to all employers from whom no information has been received. Such notice shall state the employer's name, account number, experience rate, and the quarter for which contribution and payroll need to be made. The notice will be sent or emailed to the employer's last-known address, email address, or place of business. If the employer has sold or dissolved the business, the employer shall show the date of the last wages paid and the date of last employment. If the business was sold or transferred, the employer shall provide the name and address of the successor and the employer's future mailing address.

[**ARC 8711B**, IAB 5/5/10, effective 6/9/10; **ARC 3342C**, IAB 9/27/17, effective 11/1/17]

871—23.10(96) Payments in lieu of contributions.

23.10(1) An employer who has qualified for reimbursement payments or has had an election to become a reimbursable employer approved shall pay to the department an amount equal to the amount of regular or extended benefits paid, including benefits which are based on wage credits transferred from another employer. If extended benefits are in effect, employers shall reimburse one-half of the extended benefits paid; except governmental employers and Indian tribes shall reimburse all extended benefits paid.

23.10(2) At the end of each calendar quarter, the department shall bill each reimbursable employer. This statement shall be sent to the employer within 30 days of the quarter for which the benefits are charged and shall set out the social security number, name and amount of benefits charged to the employer for each such claimant together with the amount of any previous charges remaining unpaid and interest to the end of the quarter for which the statement is rendered. Payment of each quarter's charges shall be due within 30 days of the date the statement is sent. If the employer fails to reimburse the department within the period prescribed by these rules, the department may attempt collection of the amount due including any of the following methods:

a. Issuance of Notice of Jeopardy Assessment and Demand for Payment.

b. Issuance of Notice of Lien.

c. Any other actions as prescribed by the law or these rules including collection by distress warrant.

Interest on delinquent reimbursable benefits shall be charged at the rate of 1 percent per month or one-thirtieth of 1 percent per day from the date payment was due until the date of payment.

This rule is intended to implement Iowa Code section 96.7(8).

[**ARC 3342C**, IAB 9/27/17, effective 11/1/17]

871—23.11(96) Identification of workers covered by the Iowa employment security law.

23.11(1) Each employer shall ascertain the federal social security number of each worker employed by such employer in employment subject to the Iowa employment security law.

23.11(2) The employer shall report the worker's federal social security number in making any report required by the department of workforce development with respect to the worker.

23.11(3) If a worker failed to report to the employer such employee's correct federal social security number or fails to show the employer a receipt issued by an office of the social security board acknowledging that the worker has filed an application for an account number, the employer shall inform the worker that Regulation 106 of the Internal Revenue Service, United States Treasury Department, under the Federal Insurance Contribution Act provides that:

a. Each worker shall report to every employer for whom the worker is engaged in employment a federal social security number with the worker's name exactly as shown on the social security card issued to the worker by the social security board.

b. Each worker who has not secured an account number shall file an application for a federal social security account number on Form SS-5 of the Treasury Department, Internal Revenue Service. The application shall be filed on or before the seventh day after the date on which the worker first performs employment for wages, except that the application shall be filed on or before the date the worker leaves employment if such date precedes such seventh day.

c. If, within 14 days after the date on which the worker first performs employment for wages for the employer, or on the day on which the worker leaves the employ of the employer, whichever is the earlier, the worker does not have a federal social security account number, and has not shown the employer a

receipt issued to the worker by an office of the social security board acknowledging that the worker has filed an application for an account number, the worker shall furnish the employer an application on Form SS-5, completely filled in and signed by the worker. If a copy of Form SS-5 is not available, the worker shall furnish the employer a written statement, signed by the worker, of the date of the statement, the worker's full name, present address, date and place of birth, father's full name, mother's full name before marriage, worker's sex, and a statement as to whether the worker had previously filed an application on Form SS-5 and, if so, the date and place of such filing. Furnishing the employer with an executed Form SS-5, or statement in lieu thereof, does not relieve the worker of the obligation to make an application on Form SS-5 as required in paragraph *"b"* of this subrule.

[**ARC 8711B**, IAB 5/5/10, effective 6/9/10]

871—23.12 Reserved.

871—23.13(96) Employer elections to cover multistate workers.

23.13(1) *Arrangement.* The following rule shall govern the workforce development department in its administrative cooperation with other states subscribing to the interstate reciprocal coverage arrangement, hereinafter referred to as the arrangement.

23.13(2) *Definitions.* As used in this rule, unless the context clearly indicates otherwise:

a. "Jurisdiction" means any state of the United States, the District of Columbia, Puerto Rico, or, with respect to the federal government, the coverage of any federal unemployment compensation law.

b. "Participating jurisdiction" means a jurisdiction whose administrative agency has subscribed to the arrangement and whose adherence thereto has not terminated.

c. "Agency" means any officer, board, department, division, commission or other authority charged with the administration of the unemployment compensation law of a participating jurisdiction.

d. "Interested jurisdiction" means any participating jurisdiction to which an election submitted under this rule is sent for its approval; and interested agency means the agency of such jurisdiction.

e. "Services customarily performed by an individual in more than one jurisdiction" means services performed in more than one jurisdiction during a reasonable period, if the nature of the service gives reasonable assurance that they will continue to be performed in more than one jurisdiction or if such services are required or expected to be performed in more than one jurisdiction under the election.

f. "Total wages paid in covered employment," as it appears in Iowa Code section 96.7(2) for computing the benefit cost ratio, means total wages paid in covered employment, subject to contributions, as provided in Iowa Code section 96.7, and does not include wages paid by reimbursing employers whose payments to the unemployment fund, in lieu of contributions, are made in accordance with Iowa Code section 96.7.

23.13(3) *Submission and approval of coverage elections under the interstate reciprocal coverage arrangement.*

a. Any employing unit may file an election to cover under the law of a single participating jurisdiction all of the services performed for the employing unit by any individual who customarily works for the employing unit in more than one participating jurisdiction. Such an election may be filed, with respect to an individual, with any participating jurisdiction in which:

(1) Any part of the individual's services are performed;

(2) The individual resides; or

(3) The employing unit maintains a place of business to which the individual's services bear a reasonable relation.

b. The agency of the elected jurisdiction (thus selected and determined) shall initially approve or disapprove the election. If such agency approves the election, it shall forward a copy thereof to the agency of each other participating jurisdiction specified thereon, under whose unemployment compensation law the individual or individuals in question might, in the absence of such election, be covered. Each such interested agency shall approve or disapprove the election, as promptly as practicable, and shall notify the agency of the elected jurisdiction accordingly. In case its law so requires, any such interested agency may, before taking such action, require from the electing employing unit satisfactory evidence that the affected employees have been notified of, and have acquiesced in the election.

c. If the agency of the elected jurisdiction, or the agency of any interested jurisdiction, disapproves the election, the disapproving agency shall notify the elected jurisdiction and the electing employing unit of its action and of its reasons therefor.

d. Such an election shall take effect as to the elected jurisdiction only if approved by its agency and by one or more interested agencies. An election thus approved shall take effect, as to any interested agency, only if it is approved by such agency.

e. In case any such election is approved only in part, or is disapproved by some of such agencies, the electing employing unit may withdraw its election within ten days after being notified of such action.

23.13(4) *Effective period of election.*

a. Commencement. An election duly approved under this rule shall become effective at the beginning of the calendar quarter in which the election was submitted, unless the election, as approved, specifies the beginning of a different calendar quarter. If the electing unit requests an earlier effective date than the beginning of the calendar quarter in which the election is submitted, such earlier date may be approved solely as to those interested jurisdictions in which the employer had no liability to pay contributions for the earlier period in question.

b. Termination.

(1) The application of an election to any individual under this rule shall terminate, if the agency of the elected jurisdiction finds that the nature of the services customarily performed by the individual for the electing unit has changed, so that they are no longer customarily performed in more than one particular jurisdiction. Such termination shall be effective as of the close of the calendar quarter in which notice of such findings is mailed to all parties affected.

(2) Except as provided in subparagraph (1) of this paragraph, each election approved hereunder shall remain in effect through the close of the calendar year in which it is submitted, and thereafter until the close of the calendar quarter in which the electing unit gives written notice of its termination to all affected agencies.

(3) Whenever an election under this rule ceases to apply to any individual, under subparagraph (1) or (2) of this paragraph the electing unit shall notify the affected individual accordingly.

23.13(5) *Reports and notices by the electing unit.*

a. The electing unit shall promptly notify each individual affected by its approved election and shall furnish the elected agency a copy of such notice.

b. Whenever an individual covered by an election under this rule is separated from employment, the electing unit shall again notify the individual forthwith, as to the jurisdiction under whose unemployment compensation law the individual's services have been covered. If at the time of termination the individual is not located in the elected jurisdiction, the electing unit shall notify the individual as to the procedure for filing interstate benefit claims.

c. The electing unit shall immediately report to the elected jurisdiction any change which occurs in the conditions of employment pertinent to its election, such as cases where an individual's services for the employer cease to be customarily performed in more than one participating jurisdiction or where a change in the work assigned to an individual requires such individual to perform services in a new participating jurisdiction.

[**ARC 3342C**, IAB 9/27/17, effective 11/1/17]

871—23.14(96) Elective coverage of excluded services.

23.14(1) An employing unit having services performed for it which are not subject to the compulsory coverage provisions of the Act may file an application for voluntary election to become an employer under the law or to extend its coverage to individuals performing services which do not constitute employment as defined in the law.

a. In no case shall an elective coverage agreement under Iowa Code section 96.8(3) be approved unless and until it has been established that the employing unit making application for elective coverage is normally and continuously engaged in a regular trade, business or occupation.

b. An application for elective coverage shall be disapproved if the department finds that the employing unit at the time of making the application was insolvent or expected to discontinue business for

any reason within one year from the date the application is filed, or that the employing unit is not normally and continuously engaged in a regular trade, business or occupation.

c. The department may, on its own motion, request a written statement as to why an employing unit wishes to file an election to become a subject employer as provided for in Iowa Code section 96.8(3)*"a"* and may request evidence of financial stability.

d. Any written election for a period prior to the date of filing shall become binding upon approval by the department, and notification of the approval shall be forwarded to the employer. If for any reason the department does not approve such voluntary election, the employing unit shall be notified of the reasons why such approval was withheld.

e. The effective date of the voluntary election is the date that it is received by the department.

f. Effect of election approval. Each approval of an election shall state the date as of which the approval is effective. The first contribution payment of any employing unit which elects to become a covered employer shall become due and shall be paid on or before the due date of the reporting period during which the conditions of becoming a covered employer by election are satisfied, and shall include employer contributions with respect to all wages paid on and after the date stated in such approval (as of which such employing unit becomes a covered employer), up to and including the last pay period in the reporting period in which the conditions of becoming a covered employer by election are satisfied.

23.14(2) Reserved.

[**ARC 3402C**, IAB 10/11/17, effective 11/15/17]

871—23.15 to **23.17** Reserved.

871—23.18(96) Nature of relationship between employer-employee.

23.18(1) *Commission sales persons and insurance solicitors.* Commission sales persons generally are considered employees subject to the law regardless of the method of their remuneration unless they are independent contractors.

23.18(2) *Directors and officers of a corporation.* Directors who receive a reasonable fee for attending meetings and perform no other services are not employees of the corporation. Officers of associations and corporations are included as employees if they perform services. Officers of a corporation who perform services for the corporation are employees.

23.18(3) *Members of family.*

a. Services performed by an individual in the employ of a son, daughter, or spouse, and services performed by a child under the age of 18 in the employ of a father or mother are exempt from the provisions of this Act.

b. Services performed by a foster parent in the employ of a foster child, by a stepparent in the employ of a stepchild, and by a child under the age of 18 years in the employ of a stepparent or foster parents are exempt from the provisions of this Act.

c. Services performed by a son or daughter over the age of 18 as an approved provider for consumer-directed care in the employ of a father or mother who is an approved consumer of a home- and community-based waiver services program are exempt from the provisions of Iowa Code chapter 96.

23.18(4) *Aliens.* This Act makes no distinction between citizens and lawful aliens. Lawful aliens in nonexempt employment are counted in determining whether the employer is subject to the Act and are covered by the contribution and benefit provision.

23.18(5) *Aged and minor employees.* Contributions are payable upon services rendered by an employee regardless of the age of the employee.

23.18(6) *Family employment.* Family employment includes parents, wife or husband and minor children under the age of 18 years working for an individual proprietor. This exclusion does not apply when the employing unit is a partnership unless an exempt relationship is held to each member of the partnership. This exclusion does not apply to corporations or to limited liability companies.

23.18(7) *Partners.* Bona fide partners are not considered employees even though they receive salaries.

23.18(8) *Apprentices-clerks.* This law makes no exceptions for persons serving a clerkship or other form of apprenticeship.

23.18(9) *Members of a limited liability company.* Members of a limited liability company that perform services other than for the purpose of acquiring membership in the limited liability company are employees.

[**ARC 8711B**, IAB 5/5/10, effective 6/9/10]

871—23.19(96) Employer-employee and independent contractor relationship.

23.19(1) The relationship of employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. An employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. It is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if the employer has the right to do so. The right to discharge or terminate a relationship is also an important factor indicating that the person possessing that right is an employer. Where such discharge or termination will constitute a breach of contract and the discharging person may be liable for damages, the circumstances indicate a relationship of independent contractor. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools, equipment, material and a place to work to the individual who performs the services. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, that individual is an independent contractor. An individual performing services as an independent contractor is not as to such services an employee under the usual common law rules. Individuals such as physicians, lawyers, dentists, veterinarians, construction contractors, public stenographers, and auctioneers, engaged in the pursuit of an independent trade, occupation, business or profession, in which they offer services to the public, are independent contractors and not employees. Professional employees who perform services for another individual or legal entity are covered employees.

23.19(2) The nature of the contract undertaken by one for the performance of a certain type, kind, or piece of work at a fixed price is a factor to be considered in determining the status of an independent contractor. In general, employees perform the work continuously and primarily their labor is purchased, whereas the independent contractor undertakes the performance of a specific job. Independent contractors follow a distinct trade, occupation, business, or profession in which they offer their services to the public to be performed without the control of those seeking the benefit of their training or experience.

23.19(3) Independent contractors can make a profit or loss. They are more likely to have unreimbursed expenses than employees and to have fixed, ongoing costs regardless of whether work is currently being performed. Independent contractors often have significant investment in real or personal property that they use in performing services for someone else.

23.19(4) Employees are usually paid a fixed wage computed on a weekly or hourly basis while an independent contractor is usually paid one sum for the entire work, whether it be paid in the form of a lump sum or installments. The employer-employee relationship may exist regardless of the form, measurement, designation or manner of remuneration.

23.19(5) The right to employ assistants with the exclusive right to supervise their activity and completely delegate the work is an indication of an independent contractor relationship.

23.19(6) Services performed by an individual for remuneration are presumed to be employment unless and until it is shown to the satisfaction of the department that the individual is in fact an independent contractor. Whether the relationship of employer and employee exists under the usual common law rules will be determined upon an examination of the particular facts of each case.

23.19(7) If the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. Thus, if such relationship exists, it is of no consequence that the employee is designated as a partner, coadventurer, agent, independent contractor, or the like.

23.19(8) All classes or grades of employees are included within the relationship of employer and employee. For example, superintendents, managers and other supervisory personnel are employees.

871—23.20(96) Employment—student and spouse of student. Wages earned by a student who performs services in the employ of a school, college or university at which the student is enrolled and is regularly attending classes (either on a full-time or part-time basis) are not covered wages for claim or benefit purposes.

Wages earned by an individual who is a full-time employee for a school, college or university whose academic pursuit is incidental to the full-time employment are covered wages.

Wages earned by the spouse of such a student in employment with the educational institution attended by the student are not covered wages 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.

This rule is intended to implement Iowa Code section 96.19(18)*"g"*(6).

871—23.21(96) Excluded employment—student. 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 no 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 excluded from said definition.

This rule is intended to implement Iowa Code section 96.19(18)*"g"*(6).

871—23.22(96) Employees of contractors and subcontractors.

23.22(1) If one employer contracts with another employing unit for any work which is part of the first employer's usual business, the first employer is liable for any contributions based on wages paid by the second employing unit in connection with the work providing the second employing unit is not liable to pay contributions.

23.22(2) Employees of the second contractor are counted as employees of the first contractor while performing services on the contract for the first contractor.

871—23.23(96) Liability of affiliated employing units. An employing unit not qualifying as a covered employer under any other section of this law shall be a liable employer if together with one or more employing units owned or controlled by the same interest, the combined employment or quarterly gross wages (counting together the number of workers or the combined gross quarterly wages of each enterprise) would total one or more workers in a portion of a day in each of 20 different weeks or have a combined gross quarterly payroll which equals or exceeds $1,500 in a calendar quarter.

871—23.24(96) Localization of employment—employees covered—exemption.

23.24(1) When workers perform services in more than one state, the department will review each case individually and make a determination whether or not wages are reportable to Iowa based on the following guidelines in sequence:

a. Services performed in a state are considered localized in that state regardless of where the employer is located. The wages are reportable to the state where the services are performed.

b. When a worker performs services in more than one state and the length of service in any one state is equal to or greater than a reporting period, the worker is reportable to that state. A reporting period is defined as a full calendar quarter. This rule does not apply if work is performed in multiple states during the reporting period.

c. Where services are performed among two or more states in a reporting period, the base of operations is considered. The base of operations is the point from which the workers start and finish their work on a regular basis and that is the state to which the wages are reportable. In this type of case, the department has the right to waive Iowa coverage to another jurisdiction (state of the base of operations) as long as the employee is properly covered by the other state.

d. When workers perform services in more than one state and there is no base of operations in any one state, the state from which the worker is immediately directed and controlled is the state to which the wages are reportable provided that some services are performed by the worker in that state.

e. If the services of the workers are not localized in a state, the base of operations is not involved or the place where services are directed and controlled is not applicable, then the wages are reportable to the state in which the worker resides provided some services are performed in that state.

23.24(2) Reserved.

This rule is intended to implement Iowa Code section 96.19(18)*"b."*

871—23.25(96) Domestic service.

23.25(1) Services of a household nature performed by an individual in or about the private home of the person by whom the individual is employed or performed in or about the club rooms or house of a local college club or local chapter of a college fraternity or sorority by which the individual is employed are included within the term "domestic service."

23.25(2) A private home is the fixed place of abode or residence of an individual or family, including the house and the lands on which the house stands.

23.25(3) Services of a general household nature are those ordinarily and customarily performed as an integral part of the upkeep operation and maintenance of a dwelling, residence or private home. In general, covered services of a household nature in or about a private home include services rendered by workers such as cleaning people, cooks, maids, housekeepers, caretakers, yard workers and similar domestic workers. In addition, services performed by babysitters, nannies, health aides and similar workers for members of the household are covered.

23.25(4) The services enumerated above are not covered under the term "domestic service" if performed in or about rooming or lodging houses, boarding houses, clubs (except local college clubs), hotels, offices or other commercial enterprises.

23.25(5) The term "domestic service" does not include the service of a skilled mechanic engaged in recognized independent craft not habitually rendered as a part of ordinary household duties. In situations where it may be necessary to determine whether or not an employer-employee relationship exists between the householder and the household worker, the guidelines as set forth in 871—23.19(96) will be applied.

23.25(6) Reserved.

23.25(7) Services of a household nature performed in or about the club rooms or house of a local college club, or in or about the club rooms or house of a local chapter of a college fraternity or sorority, by a student who is enrolled and regularly attending classes at a school, college, or university are excepted from employment. For the purpose of this exception, the statutory tests are the type of services performed by the employee, the character of the place where the services are performed, and the status of the employee as a student enrolled and regularly attending classes at a school, college, or university where the term "school, college, or university" is taken in its commonly or generally accepted sense.

23.25(8) In general, services of a household nature in or about the club rooms or house of a local college club or local chapter of a college fraternity or sorority include but are not limited to services rendered by cooks, janitors, laundry persons, furnace persons, handy persons, gardeners and housekeepers.

23.25(9) A local college club or local chapter of a college fraternity or sorority does not include an alumni club or chapter. If the club rooms or house of a local college club or local chapter of a college fraternity or sorority is used primarily for the purpose of supplying board or lodging to students or the public as a business enterprise, the services performed there are not covered under the term "domestic service."

23.25(10) Reserved.

23.25(11) Where an individual is employed by a domestic service or home health care organization to perform domestic services in a private home, the individual is an employee of the service firm, not the householder.

This rule is intended to implement Iowa Code sections 96.19(13) and 96.19(16)*"m."*

871—23.26(96) Definition of a farm—agricultural labor.

23.26(1) "Farm" as used in section 96.19(6)*"g"*(3) and as used in these rules means one or more plots of land not necessarily contiguous, including structures and buildings, used either primarily for raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry and furbearing animals and wildlife or both such uses, if the activities conducted on the plot or plots of land have as their purpose the accomplishment of an objective which is agricultural in nature.

23.26(2) The definition of farm given in subrule 23.26(1) includes, but is not limited to, nurseries, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities. A parcel of real property or a portion of a parcel of real property which is used primarily for the raising of nursery stock from seeds, cuttings or transplanted stock is a farm. If any parcel of real property or a portion of a parcel of real property is used both for the raising of nursery stock and for display of nursery stock or allied products for sale, the parcel or portion is not a farm if the raising is not the primary operation. A parcel of real property or a portion of a parcel of real property which is used primarily to display nursery stock for sale, or to display an allied product for sale, or both, is not a farm. Allied product, as used in this rule, includes but is not limited to, garden supplies, lawn supplies, tools, equipment, fertilizers, sprays, insecticides or pottery.

23.26(3) If other than incidental sales of an allied product are made in connection with a nursery, the operations in connection with the sales area are commercial operations as distinguished from ordinary farm operations and services performed with respect to the sales areas are not agricultural labor.

23.26(4) A plot of land used primarily for the raising of Christmas trees is a farm.

23.26(5) The following shall be used to determine whether or not services are defined as agricultural labor.

a. Services performed by an individual on a farm, in the employ of any owner, tenant or operator, in connection with the operation constitutes agricultural labor if:

(1) The services are on the farm on which the materials in their raw or natural state were produced, and

(2) Processing, packing, packaging, transportation, or marketing is carried on as an incident to ordinary farming operation.

b. If the service is performed as an incident to industrial, manufacturing or commercial operation it does not constitute agricultural labor. (Example: Services performed for an insurance company in repair and construction of farm buildings do not constitute agricultural labor.)

23.26(6) Services performed on nonfarm property while in the employ of one who is not the owner, tenant or operator of the farm to which the operation relates or any service rendered in connection with the maintenance and repair of equipment, used in operation on the farm, as well as related collection, clerical and bookkeeping services, are not agricultural labor.

23.26(7) Services performed in the handling or processing of any agricultural or horticultural commodity are included as agricultural employment if performed in the employ of the owner, tenant, or other farm operator, only if the commodity is in a nonmanufactured state and only if the operator produced more than half of the commodity with respect to which the service was performed.

23.26(8) Aerial seeding, fertilizing, spraying, dusting, custom planting, cultivating or combining of farm acres while in the employ of any agricultural enterprise is agricultural labor. These include mixing or loading into the airplane the spraying or dusting material, as well as the measuring of the swaths and the marking and flagging of the fields, and is considered agricultural as long as it is performed on a farm. If any of these services are performed on property other than a farm, they are not agricultural labor and are covered by the other provisions of the Iowa employment security law.

23.26(9) If the employer does not own or operate the farm which is being sprayed or dusted, any service related to employees in connection with maintenance and repair of the aircraft, trucks, or other equipment used in those operations, as well as related collection, clerical and bookkeeping services, are not agricultural labor and are not exempt under the Iowa employment security law.

23.26(10) Services performed on a farm in the employ of any person in connection with hatching poultry are agricultural labor. A plot of land together with the structures and buildings located off the farm,

devoted to the hatching of poultry, is not considered to be a farm. Any service, under any contract of hire, performed off the farm in connection with the hatching of poultry shall not be considered agricultural labor.

23.26(11) Executive, supervisory, administrative, clerical, stenographic, and office work are not agricultural labor although they may be rendered on a farm and in relation to a farm.

23.26(12) Services performed on a farm incidental to the overall commercial activities which are not incidental to ordinary farming operation or directly related to the farming operation are not agricultural labor.

23.26(13) Services performed in connection with the processing of agricultural commodities performed on a farm, for a farm operation, are not agricultural labor unless one-half or more of the commodities processed are produced by the farm operator.

23.26(14) Services performed in agricultural employment as defined in Iowa Code section 96.19(18) *"g"*(3) or rule 871—23.26(96) by an agricultural employee one-half or more of any calendar month shall be considered agricultural employment the whole of that calendar month.

871—23.27(96) Exempt employment in the employ of a church, association of churches or an organization which is operated primarily for religious purposes.

23.27(1) The word *"church"* is used in its limited sense and is synonymous with an individual house of worship maintained by a particular congregation. Any service by an individual for a church, convention or association of churches is excluded from coverage. However, the exclusion does not apply to service performed for an organization which may be religious in orientation unless it is operated primarily for religious purposes and is operated, supervised, controlled or principally supported by a church (or a convention or association of churches). Thus, the service of the janitor of a church is excluded, but the service of a janitor for a separately incorporated college, although it may be church related, is covered.

23.27(2) Service for a college devoted primarily to the preparation of students for the ministry is exempt, as is service for a novitiate or a house of study, training candidates to become members of religious orders. On the other hand, a church-related (separately incorporated) charitable organization (such as an orphanage or a home for the aged) is not considered, under this Act, to be operated primarily for religious purposes.

23.27(3) The exclusion of service performed by ministers in the exercise of their ministry and by members of a religious order in performing the duties required by such order applies only when such service is performed for nonprofit organizations ordinarily required to be covered by the Iowa employment security law.

23.27(4) A minister is ordained, commissioned, or licensed, if such minister has been vested with ministerial status in accordance with the procedure followed by the particular church denomination. However, such minister does not have to be connected with a congregation. Ministerial authority continues until revoked by the church.

23.27(5) The term *"exercise of the ministry"* includes: the conduct of religious worship and the ministration of sacerdotal functions; service performed in the control, conduct, and maintenance of a religious organization under the authority of a religious body constituting a church or church denomination, or an organization operated as an integral agency of such a religious organization or of a church or church denomination; service performed for any organization under an assignment or designation by a church (not including cases in which a church merely helps a minister by recommending such minister for a position involving nonministerial services for an organization not connected with the church); and missionary service or administrative work in the employ of a missionary organization. Control, conduct, and maintenance of an organization do not include services such as operating an elevator, or being a janitor, but refers to services performed in the directing, management, or promotion of the activities of the organization.

23.27(6) Accordingly, service of a clergyman (clergywoman) as a chaplain in an orphanage or in an old-age home is excluded since such service is in the exercise of a ministry as is the service of members of a teaching or nursing order who are engaged in teaching or nursing. In the case of a member of a religious order, the criterion is whether the order requires the performance of such service.

23.27(7) School coverage.

a. Schools that are not separately incorporated and are affiliated with a church are exempt from insured employment because their employees are in the direct employ of a church or convention or association of churches.

b. Schools that are separately incorporated and are affiliated with a church are exempt from insured employment if such schools are operated primarily for religious purposes.

c. Schools that are not affiliated with a church are covered employers with covered employment.

"Affiliated" as used in this rule means operated, supervised, controlled, or principally supported by a church or convention or association of churches. A school which is operated primarily for religious purposes must have as its chief and principal purpose for operation a religious orientation. The school must have as its purpose of first or highest rank of importance the religious indoctrination of its students.

This rule is intended to implement Iowa Code section 96.19(18)*"a"*(6)(a) and (c).

871—23.28(96) Successor.

23.28(1) Definition of *"successor employer"* as used in Iowa Code section 96.7 and these rules means an employing unit which:

a. Acquired the organization, trade or business, or substantially all the assets of an employing unit that was subject to the provisions of Iowa Code chapter 96 prior to the acquisition, regardless of whether the acquirer was an employing unit prior to the acquisition. The acquiring employer must continue to operate the enterprise or business.

b. An employing unit that acquired a severable portion of the business of an employer who is subject to Iowa Code chapter 96 providing:

(1) The portion of the business or enterprise acquired would have in itself met the requirements of Iowa Code section 96.19(16)*"a."*

(2) An application is made for a transfer of the records of the severable portion transferred within 90 days from the date of transfer.

(3) The transfer of records meets the approval of the predecessor and department and adequate information is furnished to meet the requirements.

23.28(2) An *"organization," "trade"* or *"business"* as used in Iowa Code section 96.19(16)*"b"* is acquired if an employing unit acquires factors of an employer's organization, trade or business sufficient to constitute an entire existing going business unit as distinguished from the acquisition of merely assets from which a new business may be built. The question of whether an organization, trade or business is acquired is determined from all the factors of the particular case. Among the factors to be considered are:

a. The place of business.
b. The staff of employees.
c. The customers.
d. The good will.
e. The trade name.
f. The stock in trade.
g. The tools and fixtures.
h. Other assets.

23.28(3) Substantially all of the assets as used in Iowa Code section 96.19(16)*"b"* are acquired if an employing unit acquires substantially all of the assets of any employer which generate substantially all of the employment, except those retained incident to the liquidation of obligations.

23.28(4) A segregable and identifiable part of enterprise as used in Iowa Code section 96.7(3)*"b"* is acquired if an employing unit acquires factors of any employer's organization, trade or business sufficient to constitute an existing separable going business unit as distinguished from the acquisition of merely assets from which a new business may be built. The part of the business acquired, if considered separately, would have been liable under section 96.19(16)*"a."* The question of whether a distinct and severable portion is acquired is determined from all of the factors of the particular case. Among the factors to be considered are:

a. The place of business.
b. The staff of employees.
c. The customers.

d. The good will.
e. The trade name.
f. The stock in trade.
g. The accounts receivable.
h. The tools and fixtures.

23.28(5) *"Successor liability"* as used in Iowa Code chapter 96, and these rules, occurs for the acquiring employing unit when there is a transfer of the predecessor's assets or other physical components necessary to continue the operation of the enterprise or business to the successor employer and the successor employing unit must continue to operate the business to the same basic extent as if there had been no change in the ownership or control of the business or enterprise.

23.28(6) Successor liability will be found to occur. If an enterprise or business is leased to a covered employer and any party or entity purchases or assumes the covered employer's lease, or any party or entity acquires a new lease and substantially all of the assets of the covered employer, and the new lessee continues the operation of the enterprise or business to the same basic extent as though there had been no change in the ownership or control of the enterprise or business, such party or entity acquires the covered employer's experience.

23.28(7) The department will utilize the following general criteria when establishing successorship in specialized cases:

a. Where a covered employing unit is operating an enterprise or business under a lease agreement and it is terminated, there will be no transfer of the covered employing unit's experience unless the lessor takes over and continues to operate the enterprise or business in which case the lessor will be considered the successor to the covered employer's experience.

b. Where an enterprise or business is leased to a covered employing unit, and the lease agreement has terminated with the lessor acquiring a new lessee, the new lessee is not considered to be a successor to the experience of the predecessor lessee unless the new lessee acquires substantially all of the assets of the predecessor lessee and the new lessee continues the operation of the enterprise or business to the same basic extent as though there had been no change in the ownership or control of the enterprise or business.

c. A franchise agreement will be treated the same as lease agreement.

d. If the bankruptcy court closes an enterprise or business, the court becomes the agent for the bankrupt employer.

(1) Where the court closes the enterprise or business and starts liquidating procedures, the employer's account is placed in an inactive status subject to termination and no successorship or transfer of the employer's experience is involved, or

(2) If the court appoints a trustee or receiver to continue the operation of the enterprise or business, the account address will be corrected to include the name of the trustee or receiver for mailing purposes. If the trustee or receiver obtains a new federal identification number for this business, a new account number will be established for the trustee or receiver as a successor to the original enterprise or business. If the trustee or receiver sells the enterprise or business as a going enterprise, the new owner will be a successor to the predecessor's experience.

e. If a covered employer is forced out of business through foreclosure proceedings there will be no transfer of the employer's experience unless the mortgagee takes over the operation of the business or enterprise and continues it to the same basic extent as though there had been no basic change in the ownership control.

This rule is intended to implement Iowa Code sections 96.7(3)*"b,"* 96.8 and 96.19(16)*"b."*

871—23.29(96) Transfer of entire business.

23.29(1) *Notice of acquisition.*

a. Whenever any employing unit in any manner succeeds to or acquires from an employer either the organization, trade or business or substantially all the assets thereof, and continues such organization, trade or business, such employing unit shall notify the department for the purpose of accomplishing the transfer of the reserve account of the predecessor employer to the successor employing unit. Such notification must include the name and address of the predecessor, the date of acquisition, and the name and address of the successor. When such notice has been received or in the absence of the notice when necessary information

establishing that the acquisition occurred has been received by the department, the actual contribution and benefit experience and taxable payrolls of the predecessor shall be transferred to the successor employing unit for determining its rate of contribution. Thereafter, benefits chargeable because of employment for such transferred organization, trade, or business shall be charged to the account of the successor. The predecessor must notify the department of the status change.

b. Where one or more employing units have been reorganized, merged or consolidated into a single employing unit and the successor employing unit continues to operate such merged or consolidated enterprise, the employing units involved shall notify the department within 30 days from the date of the transaction. All entities involved in the merger shall provide the articles of merger, or if there are no articles of merger, a statement advising that the merger has transpired.

(1) The predecessor business or businesses involved in the merger shall each file a final quarterly payroll report form as soon as possible after the merger has occurred but in no case later than 30 days after the close of the quarter in which the merger occurred.

(2) The successor entity shall indicate whether or not the experience rates of all accounts are to be combined and the rate recomputed for the balance of the calendar year in which the merger took place.

23.29(2) *Contribution rate.* The successor's contribution rate for the remainder of the calendar year beginning with the date of acquisition shall be assigned as follows:

a. If the successor had no account prior to the transfer and the successor purchased the business of only one predecessor, or more than one predecessor with identical rates, the rate assigned will be the rate of the predecessor employer or employers.

b. If the successor had no account prior to the transfer and purchased the business of more than one predecessor on the same day, the final rate assigned will be a computed rate based on the combined experience of all the predecessor employers.

c. If the successor had an account prior to the transfer, the rate assigned will be the successor's existing rate. However, the successor may apply for a recomputed rate based on the combined experience of the predecessor or predecessors and the experience of the successor.

This rule is intended to implement Iowa Code section 96.7(2)*"b."*

[**ARC 3303C**, IAB 8/30/17, effective 10/4/17]

871—23.30(96) Successorship—liability for contributions and payments in lieu of contributions.

23.30(1) Any employer who becomes a successor to an employer account shall be held liable for any unpaid contributions, reimbursable benefit payments, interest, penalties or costs which are owed to the department by the predecessor at the time of the transfer. An employer which is found to be a successor to a reimbursable account shall also be liable to reimburse the department for benefits paid after the date of acquisition that are based on wages paid by the reimbursable predecessor prior to the date of acquisition whether or not the successor has elected, or is eligible to elect, to become a reimbursable employer with respect to the successor's payroll.

23.30(2) Transfers under the Bulk Sales Act, uniform commercial code of Iowa, shall not be held by the department to be exempted from the provisions of Iowa Code section 96.7. The transferee shall be held a successor to the employer account of the transferor and liable for any unpaid contributions, reimbursable benefit payments, interest, penalty, and costs owed to the department by the transferor notwithstanding any agreement between the two parties pursuant to the Bulk Sales Act, provided the transferee continues to operate the business.

This rule is intended to implement Iowa Code section 96.7.

871—23.31(96) Transfer of segregable portion of an enterprise or business.

23.31(1) *Application and required information.*

a. The experience of a distinct and segregable portion of an organization, trade, or business shall be transferred to an employing unit which has acquired such portion only if the successor employing unit:

(1) Completes an electronic registration within 90 days after the date of purchase;

(2) Submits necessary information establishing the separate identity of the accounts within 30 days after request is made by the department unless the time is extended for good cause shown; and

(3) Continues to operate the acquired portion of the business.

b. Necessary information establishing the separate identity of the account includes but is not limited to:

(1) Authorized agreement to the transfer by the predecessor;

(2) Date of acquisition of the segregable portion;

(3) Date of commencement of the segregable portion by the predecessor;

(4) The names of employees, their social security numbers, and their wages attributable to the acquired portion of the business for the six calendar quarters including and immediately preceding the quarter in which the acquisition occurred; and

(5) The predecessor and successor names, addresses, and account numbers and information showing the total taxable wages and benefit charges to be transferred by quarter, for the 20 calendar quarters including and immediately preceding the date of the acquisition.

c. It shall be the sole responsibility of the successor employer to determine whether or not to apply for a partial transfer of experience. An application for a partial transfer may be withdrawn at any time prior to the department's notice that the transfer has been approved.

d. It shall be the sole responsibility of the predecessor employer to determine whether or not to grant the partial transfer of experience. Permission to grant the partial transfer of experience may be withdrawn at any time prior to the department's notice that the transfer has been approved.

23.31(2) *Portion of reserve and payroll transferred.* When the requirements for partial transfer as defined in subrule 23.31(1) have been met, the transfer shall be made in accordance with one of the following:

a. If the predecessor's account has been in existence less than five years prior to the acquisition or purchase date (or more than five years when records are available), the information necessary to calculate future rates will be transferred; or

b. If the predecessor's account has been in existence more than five years (and records prior to five years are unavailable) and the acquired portion has also been in existence more than five years,

(1) The actual taxable wages, and benefit charges attributable to the acquired portion for the five-year period immediately preceding the date of acquisition shall be transferred, plus

(2) That portion of the predecessor's benefit charges for the period commencing with the beginning date of the predecessor's account and ending five years prior to the acquisition date equal to the ratio of the taxable wages attributable to the acquired portion for the 12 completed calendar quarters immediately preceding the acquisition date to the total taxable wages reported by the predecessor for the same 12-quarter period, and

(3) The individual wage records attributable to the acquired portion; or

c. If the predecessor's account has been in existence more than five years but the acquired portion came into existence within the last five years, the actual taxable wages, benefit charges, and individual wage records attributable to the acquired portion shall be transferred; or

d. In the case of governmental transfers in addition to the items listed above, contributions and interest earned must be transferred for all years.

23.31(3) *Future benefit charges based on wages paid by the predecessor prior to the acquisition or purchase date.* The successor employer will receive future benefit charges based on the wage credits transferred to said successor's account for the six-quarter period immediately preceding the acquisition date plus any benefit charges based on wages attributable to the acquired portion prior to the six-quarter period on claims already filed on the date of the acquisition.

23.31(4) *Notification of approval or denial of transfer and appeals.*

a. Upon receipt of application (see subrule 23.31(1)) and accompanying information as required, the department shall issue a determination approving or denying the partial transfer. The determination approving a partial transfer will include notice to both parties as to their contribution rate for the current year.

b. If the department finds in any case that the acquisition of a business or a severable portion thereof was made solely or primarily for the purpose of obtaining a more favorable rate of contribution, the transfer of the reserve account shall not be approved. An acquisition shall be deemed to have been solely or

primarily for such purpose if the department finds an absence of any reasonable business purpose for the acquisition other than a more favorable contribution rate.

c. Any determination made hereunder denying a partial transfer shall become conclusive and binding upon both the predecessor and successor unless one or both of them file an appeal. For the specific procedure and requirements for perfecting an appeal of an employer liability determination see rules 871—23.52(96) to 871—23.56(96).

23.31(5) *Liability of successor for contribution.* Any individual or organization, whether or not an employing unit, which in any manner acquires the organization, trade or business or substantially all of the assets thereof, and is held to be a successor, shall be liable for the payment of contribution, interest and penalty, due or accrued and unpaid by such predecessor employer, at the time of acquisition or purchase, if the department concludes that such contributions cannot be collected from the predecessor on the portion of such organization, trade or business acquired by the successor.

This rule is intended to implement Iowa Code section 96.7(3).

[**ARC 8711B**, IAB 5/5/10, effective 6/9/10; **ARC 3402C**, IAB 10/11/17, effective 11/15/17]

871—23.32(96) Mandatory and prohibited successorships.

23.32(1) This rule applies to the mandatory successorship in Iowa Code section 96.7(2)*"b"*(2) and the prohibited successorship in Iowa Code section 96.7(2)*"b"*(3). If one employing unit receives the organization, trade or business, or a portion thereof of an employing unit and there is substantially common ownership, management or control of the two, the attributable unemployment experience will be transferred. This section of the law does not require a transfer of substantially all of the assets nor does it require the transferred portion to be segregable or identifiable. The acquiring employer must continue to operate the organization, trade or business or must transfer operation to an entity with substantially common ownership, management or control with the acquiring entity. Mandatory successorship also applies when the acquirer was not an employing unit prior to the transfer.

a. A transfer of staff and the business activity of that staff to an acquiring employer unit which continues to operate the portion of the business will establish mandatory successor liability.

b. The mandatory and prohibited successorships contained in Iowa Code sections 96.7(2)*"b"*(2) and (3) apply to corporations, limited liability companies, government or governmental subdivisions or agencies, business trusts, estates, trusts, partnerships, sole proprietorships or associations, or any other legal entity as defined in Iowa Code chapter 96.

c. "Substantially common ownership, management or control" is determined from the facts of a particular case. Among the factors to be considered are:

(1) The authority to make policy decisions.

(2) The authority to perform personnel actions.

(3) Direction and control of the day-to-day operations.

(4) Financial investment.

(5) Substantial or complete ownership by the same legal entity or entities.

(6) Ability to conduct or liability for financial transactions on behalf of the business.

(7) Authority to commit the business assets.

(8) Common management which may include direction or overall supervision by an individual or group of individuals.

d. For a mandatory full successorship the tax rate shall be established as provided in subrule 23.29(2), and for a mandatory partial successorship the tax rate shall be established as provided in subrule 23.32(4).

23.32(2) In determining whether or not an acquiring entity continues to operate an organization, trade or business as used in Iowa Code section 96.7(2)*"b"*(2), the following rules apply.

a. The acquiring entity continues the ongoing business operation (taking into account any seasonal or prior operational pattern), and continues the same business activity as the prior employer. A temporary cessation of the business activity by the acquiring entity will not constitute a discontinuance of the business.

b. The acquiring entity, not having operated the business, reassigns or otherwise transfers the operation of the business to a third-party entity that has substantially common ownership, management or

control with the acquiring entity. The third party is considered to be continuing the operation of the original entity.

23.32(3) Prohibited successor liability. Successor liability is prohibited when the department finds that a legal entity that is not subject to Iowa Code chapter 96 at the time of acquisition (regardless of whether or not common ownership, management or control exists) acquires an organization, trade or business solely or primarily for the purpose of obtaining a lower rate of contribution. Factors to be considered include:

a. The existing employer account has a tax rate less than would be assigned to a new employer,

b. The cost of acquiring the organization, trade or business as compared with any potential savings in contributions costs,

c. The acquiring entity substantially changed the organization, trade or business after a short period of time, and

d. A substantial number of new employees were hired to perform duties unrelated to the organization, trade or business operated prior to the acquisition.

23.32(4) When a mandatory transfer of a portion of a business occurs, the successor's experience and contribution rate will be determined as follows:

a. The experience transferred to the acquiring employing unit will be based on the percentage of employees moving from the predecessor to that unit.

(1) The percentage will be computed by comparing the number of employees on the successor's first quarterly report covering a complete calendar quarter to the average number of employees on the four complete quarterly reports filed by the predecessor immediately preceding the transfer. The average number of employees will be computed using only the predecessor's reports that have wages paid during those four quarters.

(2) Using this percentage, taxable wages and benefit charges, commencing with the beginning date of the predecessor's account, will be transferred from the predecessor's account to the successor's account.

b. If the successor had no account prior to the transfer, the rate assigned will be the rate of the predecessor for the remainder of the calendar year beginning with the date of acquisition.

c. If the successor already had an account prior to the transfer, the rate for the balance of the year in which the transfer took place will be recomputed by combining the transferred experience with the employer's own experience as of the last computation date.

d. For the years following the year of acquisition, the rates will be computed using the experience of the employer combined with the transferred experience.

e. Future benefit(s) will be charged to the base period employer who reported the base period wages.

f. The department will issue a notification when the partial transfer has been completed. The determination will include notice to both parties as to their contribution rate for the current year.

g. Any rate determination resulting from a partial transfer will become final unless one or both of the parties files an appeal. For the specific procedure and requirements for perfecting an employer liability determination appeal, see rule 871—23.52(96).

h. In the case of governmental transfers in addition to the items listed above, contributions and interest earned must be transferred for all years.

23.32(5) Penalty contribution rate. The department may assess a penalty contribution rate of 2 percent for the current year and two subsequent years for an employer that the department finds has attempted to manipulate and circumvent the proper unemployment tax rate as provided in Iowa Code sections 96.7(2) *"b"*(2) and (3) by deliberate nondisclosure of a material fact.

a. The employer will be notified of the penalty contribution rate.

b. If, after a liability determination has been issued, the department discovers, based upon new facts not available to the department at the time the determination was made, that a previously nonliable entity acquired a business solely or primarily to obtain a lower tax rate, the department will amend the original determination and assign a new employer rate and may provide a penalty contribution rate.

c. Interest will accrue on unpaid penalty contributions in the same manner as on regular contributions.

This rule is intended to implement Iowa Code sections 96.7(2)*"b"* and 96.16(5).

[**ARC 8711B**, IAB 5/5/10, effective 6/9/10; **ARC 3402C**, IAB 10/11/17, effective 11/15/17]

871—23.33 to **23.35** Reserved.

871—23.36(96) Predecessor—contribution rates for winding down a business. In the case where a predecessor has transferred its organization, trade, or business, or substantially all assets, to a successor in interest and the predecessor employer continues to operate a part of the business in order to wind down or close the business after the date of transfer, the predecessor shall retain the same account number but will recompute the eligibility year, determination date, effective date, law citation and tax rate to that of a newly covered employer. For the purposes of this rule, the term "wind down wages" may exclude wages earned before the sale or transfer that were paid in the four consecutive quarters after the quarter in which the sale or transfer occurred.

This rule is intended to implement Iowa Code sections 96.8(1) and 96.8(4)*"a."*

[**ARC 8711B**, IAB 5/5/10, effective 6/9/10]

871—23.37(96) Adjustments and refunds of contributions.

23.37(1) Whenever any employer discovers that the contribution report submitted is incorrect resulting in overpayment of contributions due and owing, such employer may file an application for credit allowance or refund. If the department discovers that the contribution submitted by any employer is incorrect resulting in overpayment of contribution, it may on its own initiative refund or make a credit allowance. No refund or credit allowance will be made after three years from the date on which the overpayment was made. The employer's wage adjustment report shall be filed electronically to show corrections to the individual wage amounts, corrections of grand totals (total wages, taxable wages and contributions), and a full explanation for the adjustment. Adjustment shall be made by the department in the form of credit allowance or refund as provided in subrule 23.37(3) equal to that portion of contributions erroneously paid which exceeds the benefits paid to claimants as a direct result of the employer's erroneous report.

23.37(2) If the contribution and wage report first submitted by an employer understates the amount of wages paid for a given period, the employer will electronically submit a wage adjustment for the period and make payment covering all additional contributions, penalty and interest due.

a. If it is apparent, upon examination of any wages reported or adjusted, that a greater contribution than is required by law has been paid, the department may, within three years from the date of such overpayment, make an adjustment and issue a credit for such overpayment.

b. If it is not apparent from the examination of any wages reported or adjusted that a contribution greater than that required by law has been made, any employer or employing unit claiming a credit shall submit a request within three years from the date on which such overpayment was made. A credit shall be granted only after a review of the request which will set forth such information in the matter as may be required. If, after such review, the adjustment is found to be in order, the department shall issue a credit or refund for the overpayment.

23.37(3) The amount of the credit will be deducted from the contributions in the employer's account and credited to any outstanding account balance until the credit is used or canceled in accordance with these rules. If the employer fails to utilize the credit as provided above, the department shall, three years from the date of issuance, cancel the credit and show it as a nonrefundable credit. The department, upon request of the employer or on its own initiative, may issue a refund of the overpayment. The state comptroller is responsible for the issuance of the warrant.

23.37(4) When an employer requests a refund or credit of contributions paid due to an erroneous reporting of wages, the refund or credit shall be reduced by the amount of benefits paid and charged to the employer as a result of the erroneous wages.

23.37(5) All grounds and facts alleged in support of a claim for refunds or credit shall be clearly set forth. The employing unit shall furnish such proof in support of the claim as may be reasonably necessary at the discretion of the department to support the validity and the amount of the claim and the fact that the employing unit making the application for refund or credit is legally entitled to it.

[**ARC 8711B**, IAB 5/5/10, effective 6/9/10; **ARC 3303C**, IAB 8/30/17, effective 10/4/17; **ARC 3402C**, IAB 10/11/17, effective 11/15/17]

871—23.38(96) Denial of claim for refund or credit. A claim shall be denied if an employing unit within 30 days after written demand by the department fails to submit reasonable proof to support the validity and amount of the claim or fails to request an extension of time in which to submit the required information.

871—23.39(96) Reserved.

871—23.40(96) Computation of rates for private sector employer.

23.40(1) *Experience rating.* An employer's experience rate shall be computed by dividing the average of all benefits charged to an employer during the five periods of four consecutive calendar quarters immediately preceding the computation date by the employer's five-year average annual taxable payroll to arrive at the benefit ratio. This ratio shall be applied to the appropriate rate table, as determined by the department, to determine the employer's contribution rate for the next calendar year. Indian tribal contributory employers shall be considered private sector employers for the purpose of computing their contribution rate.

23.40(2) *Administrative contribution surcharge.*

a. For calendar years 2002 and 2003, each employer except a governmental entity and a 501(c)(3) nonprofit organization will have an administrative contribution surcharge added to the contribution rate. The administrative contribution surcharge shall be a percentage of the taxable wage base in effect for the rate year following the computation date which is equal to one-tenth of 1 percent of the Federal Unemployment Tax Act (FUTA) taxable wage base in effect on the computation date. The surcharge will be a three-place decimal number which is added to the contribution rate. The surcharge formula will provide a target revenue level of no greater than $6,525,000 annually and the percentage surcharge will be capped at a maximum of $7 per employee.

b. A portion of each payment received from an employer shall be considered administrative contribution surcharge and shall be credited to the administrative contribution surcharge fund. The administrative contribution surcharge shall be collectible, and interest shall accrue on unpaid surcharge at the same rate as on regular contributions.

c. The portion of the employer's payment credited to the administrative contribution surcharge fund shall not be certified to the Internal Revenue Service as contributions for which the employer may take credit against the employer's federal unemployment tax (FUTA-Form 940).

d. The administrative contribution surcharge fund shall be a separate and distinct fund from the unemployment compensation fund. Interest earned on the moneys in the administrative contribution surcharge fund shall be credited to the administrative contribution surcharge fund. Moneys in the administrative contribution surcharge fund shall be appropriated by the general assembly.

23.40(3) *Temporary emergency surcharge.* If it becomes necessary to implement a temporary emergency surcharge on all employers, except zero rated employers, governmental employers, and 501(c)(3) nonprofit organizations, for any quarter to pay interest on moneys borrowed from the federal government to pay unemployment insurance benefits, the emergency surcharge shall be collected and credited in the following manner:

a. The emergency surcharge rate shall be added to the employer's regular contribution (tax) rate for the quarter. The add-on rate shall be a uniform percentage of each affected employer's regular contribution rate rounded to the nearest one-hundredth of a percent. The affected employers will be notified by the department of the surcharge by any appropriate means available at the time.

b. A portion of each payment that is received from an employer for a quarter in which the emergency surcharge is in effect shall be considered as being temporary emergency surcharge and shall be credited to the temporary emergency surcharge fund.

c. The portion of the employer's payment credited to the temporary emergency surcharge fund shall not be certified to the Internal Revenue Service as contributions for which the employer may take credit against the employer's federal unemployment tax (FUTA-Form 940).

d. The temporary emergency surcharge shall be used to pay the interest accrued on the trust fund money advanced to the department of workforce development by the federal government.

e. The director of the department of workforce development shall prescribe the manner and the amount of the surcharge to be collected.

This rule is intended to implement Iowa Code sections 96.7(2), 96.7(11), 96.7(12) and 96.19(8).

871—23.41(96) Computation date defined. The computation date for the succeeding year's contribution rate shall be July 1. The rate computation shall include the taxable wages reported for the quarters prior to and ending on June 30 immediately preceding the computation date and benefit charges based on benefit warrants issued on or before June 30 immediately preceding the computation date. Delinquent reports received after September 30 immediately following the computation date shall not be used for the succeeding year's rate computation.

This rule is intended to implement Iowa Code section 96.19(8).

871—23.42(96) Crediting of interest earned on the unemployment trust fund. Interest received on moneys deposited with the Secretary of the Treasury of the United States shall be credited to the unemployment compensation fund.

This rule is intended to implement Iowa Code section 96.9(2)*"c."*

871—23.43(96) Charging of benefits to employer accounts.

23.43(1) *How charged.* Benefits paid to an eligible claimant shall be charged against the base period wage credits in the same inverse chronological order as the wages on which the wage credits are based were paid to the claimant.

23.43(2) *Formula for charging employer accounts.*

a. Wage credits in the most recent quarter of the base period will be used first and when wage credits in this quarter are exhausted, wage credits for the next most recent quarter will be used until each of the four quarters in the base period is exhausted or until the claimant is paid an amount not to exceed the claimant's maximum benefit amount.

b. Each employer who has wage credits in the quarter of the base period currently being used will be charged the employer's proportional share of each payment. The proportional share to be charged to each employer in the quarter will be the employer's percentage of the total wage credits in the quarter.

23.43(3) *Rule of two affirmances.*

a. Whenever an administrative law judge affirms a decision of the representative or the employment appeal board of the Iowa department of inspections and appeals affirms the decision of an administrative law judge, allowing payment of benefits, such benefits shall be paid regardless of any further appeal.

b. However, if the decision is subsequently reversed by higher authority:

(1) The protesting employer involved shall have all charges removed for all payments made on such claim.

(2) All payments to the claimant will cease as of the date of the reversed decision unless the claimant is otherwise eligible.

(3) No overpayment shall accrue to the claimant because of payment made prior to and during the period in which the department is processing the reversal decision.

23.43(4) *Supplemental employment.*

a. An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account, including the reimbursable employer's account, may be relieved of benefit charges. On a second benefit year claim where the individual worked only for the part-time employer during the base period and the lag quarter, the part-time employer shall not be considered for relief of benefit charges with the onset of the second benefit year. It is the part-time employer's responsibility to notify the department of the part-time employment situation so the department may render a decision as to the availability of the individual and benefit charges. The individual is required to report gross wages earned in the part-time employment for each week claimed and the wages shall be deducted from any benefits paid in accordance with Iowa Code section 96.3(3).

b. An individual who voluntarily quits supplemental part-time employment without good cause and has not requalified for benefits following the voluntary quit of supplemental 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 without good cause the supplemental part-time employer. The individual and the supplemental part-time employer which was voluntarily quit without good cause shall be notified on Form 65-5323 or 60-0186, Decision of the Workforce Development Representative, that benefit payments which are based on the wages paid by the supplemental part-time employer shall not be made, and benefit charges shall not be assessed against the supplemental part-time employer's account; however, once the individual meets the requalification requirements following the voluntary quit without good cause of the supplemental part-time employer, the wages paid in the supplemental part-time employment shall be restored for benefit payment and charging purposes as determined by applicable requalification requirements.

23.43(5) *Sole purpose.* 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. No charge shall accrue to the account of the former voluntarily quit employer.

23.43(6) Reserved.

23.43(7) *Department-approved training.* A claimant who qualifies and is approved for department-approved training (see rule 871—24.39(96)) shall continue to be eligible for benefit payments. No contributing employer shall be charged for benefits which are paid to the claimant during the period of the department-approved training. The relief from charges does not apply to the reimbursable employer that is required by law or election to reimburse the trust fund, and the employer shall be charged with the benefits paid.

23.43(8) *Ten times the weekly benefit amount in insured work requalification.*

a. In order to meet the ten times the weekly benefit amount in insured work requalification provision, the following criteria must be met:

Subsequent to leaving or refusing work, the individual shall have worked in (except in back pay awards) and been paid wages equal to ten times the claimant's weekly benefit amount.

b. An employer's account shall not be charged with benefit payments to an eligible claimant who quit such employment without good cause attributable to the employer or who was discharged for misconduct or who failed without good cause either to apply for available, suitable work or to accept suitable work with that employer but shall be charged to the balancing account.

c. The requalification and transfer of charges shall occur for the employer if the requalifying employment is earned with an out-of-state covered employer. The transfer of charges shall be made to the balancing account.

d. Periods of insured employment with separate employers may be joined to collectively equal ten times the individual's weekly benefit amount when requalification cannot be accomplished by an individual insured employer. The employer from whom the individual left work, was discharged or with whom the individual failed to apply or accept suitable work, will not accrue any charges.

e. Before benefits can be paid or the transfer of charges can occur, sufficient evidence must be present to establish the fact that the criteria in subrule 23.43(8), paragraph *"a,"* has been met. Verification of employment may be completed through the records of the department or by using any method establishing proof of the necessary wage credits, including the following:

(1) An employment verification form, 60-0227, is an affidavit prepared in duplicate stating: the insured employer's name, mailing address, the starting date of employment, and wages paid subsequent to that date. The form must be signed by the claimant alleging that the facts are correct. Any misrepresentation in the form may result in overpayment, fraud charges and administrative penalty any or all thereof. A copy of the form must be mailed to the employer or employers for verification. The employer should review the information on the form and certify that it is either correct or in error. If the information is incorrect, the employer should give the proper information. If the employer fails to return the form within five days of date mailed, the information on the form will be presumed to be correct.

(2) Employment check stubs may be used in conjunction with the employment verification form, 60-0227, to indicate the requalifying period.

23.43(9) *Combined wage claim transfer of wages.*

a. Iowa employers whose wage credits are transferred from Iowa to an out-of-state paying state under the interstate reciprocal benefit plan as provided in Iowa Code section 96.20 will be liable for charges for benefits paid by the out-of-state paying state. No reimbursement so payable shall be charged against a contributory employer's account for the purpose of Iowa Code section 96.7, unless wages so transferred are sufficient to establish a valid Iowa claim, and such charges shall not exceed the amount that would have been charged on the basis of a valid Iowa claim. However, an employer who is required by law or by election to reimburse the trust fund will be liable for charges against the employer's account for benefits paid by another state as required in Iowa Code section 96.8(5), regardless of whether the Iowa wages so transferred are sufficient or insufficient to establish a valid Iowa claim. Benefit payments shall be made in accordance with the claimant's eligibility under the paying state's law. Charges shall be assessed to the employer which are based on benefit payments made by the paying state.

b. The Iowa employer whose wage credits have been transferred and who has potential liability will be notified that the wages have been transferred, the state to which they have been transferred, and the mailing address to which a protest of potential charges may be mailed. This protest must be postmarked or received by the department within ten days of the date on the notice to be considered as a timely protest of charges. If the protest from either the reimbursable or contributory employer justifies relief of charges, charges shall go to the balancing account.

c. Requests received from the paying state for amounts in excess of an amount equal to potential charges of an Iowa claim will not be charged to the Iowa employer, except for reimbursable employers.

d. When Iowa is the paying state on an interstate claim and Iowa wage credits are insufficient to have a valid Iowa claim, charges shall not be made against the Iowa employer's account but shall be charged to the balancing account, except for reimbursable employers.

23.43(10) Reserved.

23.43(11) *Extended benefits.*

a. Fifty percent of the amount of each week of extended benefits paid to an individual in accordance with rule 871—24.46(96) shall be charged against the account of the employer which is chargeable for the extended benefits; however, 100 percent of the amount of each week of extended benefits paid to an individual shall be charged against the account of the Indian tribal and governmental contributory or reimbursable employer which is chargeable for the extended benefits.

b. The lack of a one-week waiting period prohibits this state from receiving a payment from the U.S. Department of Labor for 50 percent of the amount of the first week of extended benefits paid to an individual. This amount shall not be charged against the account of the employer which is chargeable for the extended benefits unless the employer is a nonprofit reimbursable employer but shall be charged against the balancing account.

c. In the event that a payment from the U.S. Department of Labor for 50 percent of any week of extended benefits paid to an individual is reduced under an order issued under Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, the amount of the reduction shall not be charged against the account of the employer which is chargeable for the extended benefits unless the employer is a nonprofit reimbursable employer but shall be charged against the balancing account.

23.43(12) *Charging of benefits paid to individuals employed by two or more employers.*

a. Whenever wage reports submitted to the department show the employment of an individual by more than one employer in the same calendar quarter, benefits shall be charged to each employer's account in the same proportion as wages paid in the quarter.

b. Benefits for partial unemployment shall be charged in the same manner as benefits for total unemployment, except that no charges shall be made against the account of the base period contributory or reimbursable employer which continues to employ the individual on the same basis that the employer employed the individual during the individual's base period.

23.43(13) *Government contributory charges.* For the purpose of determining the base rate for government contributory employers, a percentage of all benefits that are paid but are not chargeable to employer accounts because of various provisions of the law, will be considered as belonging to government contributory employers. The percentage of the nonchargeable benefits considered to be attributable to government contributory employers for each calendar year will be determined by the ratio of the benefits

actually charged to government contributory accounts for the year to the total benefits charged to all contributory accounts for the year.

23.43(14) *Removal of benefit charges upon the sale or transfer of a clearly segregable part of an employer's business or enterprise when the acquiring employer does not receive a partial transfer of experience.* Benefits based on wages earned with the transferring employer, paid to an individual who worked in and was paid wages for work with the acquiring employer shall be transferred to the balancing account. The transferring employer must protest this issue on the Notice of Claim, Form 65-5317, in a timely manner to receive relief from the charges. The relief of charges shall apply to both contributory and reimbursable employers.

23.43(15) *Disaster relief.* An employer shall not be charged with benefits for unemployment that is directly caused by a disaster declared by the president of the United States, pursuant to the federal Disaster Relief Act of 1974, if the individual would have been eligible for disaster unemployment assistance with respect to that unemployment but for the individual's receipt of regular benefits. The employer may protest the charges on the Notice of Claim, Form 65-5317, or the Quarterly Charge Statement. The employer must protest the charges within 30 days after the date of mailing of the Quarterly Charge Statement.

This rule is intended to implement Iowa Code sections 96.3(7), 96.5(1), 96.6(2), 96.7, 96.8(5), 96.9(5), 96.11(1), 96.16(4), and 96.29.

[**ARC 3402C**, IAB 10/11/17, effective 11/15/17; **ARC 4832C**, IAB 12/18/19, effective 1/22/20]

871—23.44(96) Benefits payments.

23.44(1) Overpayments. If a claimant is overpaid benefits, the employer will be relieved of benefit charges to such employer's account.

23.44(2) The employer shall not be relieved of benefit charges for a payment of back pay until the amount of the overpayment is recovered by the department.

23.44(3) Option of reimbursable credit or refund for an overpayment. The department shall credit the account of the reimbursable employer for overpayments. However, the employer may request a refund in those cases where the employer determines that it cannot use the credit against future charges within a reasonable period of time.

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

This rule is intended to implement Iowa Code sections 96.7(3), 96.11(1) and 96.20(2).

[**ARC 6893C**, IAB 2/22/23, effective 3/29/23]

871—23.45 and **23.46** Reserved.

871—23.47(96) Termination of accounts because of no wage reports.

23.47(1) If an employer discontinues business or continues business without employment, the employer may request that the employer's account be placed in an inactive status. Upon determination of an inactive status, the department shall notify the employer that the employer's account has been placed in an inactive status and that the employer is not required to file quarterly reports. However, the employer must notify the department if the employer resumes paying Iowa wages.

23.47(2) If the department finds that an employer has discontinued business or is no longer paying wages, the department may on its own motion place the account in an inactive status. However, the employer must notify the department if the employer resumes paying Iowa wages.

23.47(3) If prior to termination, an inactive account is found to have paid wages in any quarter, the employer account shall be reactivated, reports shall be secured for all quarters the account was inactive, including no wage reports for quarters for which there was no employment, and the account shall receive

an experience rating; provided, the account has been in existence long enough to qualify for an experience rating.

23.47(4) If, on the rate computation date, the department finds that an employer has not paid wages during the eight consecutive calendar quarters immediately preceding the computation date, the employer's account shall be terminated effective the January 1 following the computation date. However, if the employer pays wages after the computation date and prior to the following January 1, the employer's account shall not be terminated, and the employer will receive an assigned rate or an experience rating.

23.47(5) If an employer has filed eight consecutive reports with zero wages, the account may be placed in inactive status.

This rule is intended to implement Iowa Code sections 96.7(2)*"c"* and *"d"* and 96.8(4)*"b."*

[**ARC 8711B**, IAB 5/5/10, effective 6/9/10]

871—23.48(96) Previously covered employers. If a contributory employer's account has been properly terminated and the employer is again determined liable or a reimbursable employer again elects to be contributory, the employer shall receive a new account number and be treated the same as a newly covered employer.

This rule is intended to implement Iowa Code sections 96.7 and 96.8.

[**ARC 8711B**, IAB 5/5/10, effective 6/9/10; **ARC 3247C**, IAB 8/2/17, effective 9/6/17]

871—23.49 and **23.50** Reserved.

871—23.51(96) Payments in lieu of contributions.

23.51(1) Each nonprofit organization which has been approved to make payments in lieu of contributions shall be billed each quarter for benefits paid during such quarter.

23.51(2) The payments to the unemployment fund which are required by Iowa Code section 96.7 for those employers who elect to reimburse the department shall be in an amount equal to the regular benefits and one-half of the extended benefits paid and charged to such employer's account. Government and Indian tribal reimbursable employers will be charged all of the extended benefits paid.

This rule is intended to implement Iowa Code section 96.8(5).

871—23.52(96) Employer liability appeal.

23.52(1) An initial employer liability determination including employer status and liability, assessments, rate of contributions, successorships, worker's status, and all questions regarding coverage of a worker or group of workers may be appealed to the department of workforce development for a hearing before an administrative law judge with the department of inspections and appeals.

23.52(2) The appeal shall be in writing stating:

a. The name, address and Iowa employer account number of the employer.

b. The name and official position of the person filing the appeal.

c. The decision which is being appealed.

d. The grounds upon which the appeal is based.

23.52(3) The appeal shall be addressed or delivered to: Department of Workforce Development, Tax Bureau, 1000 East Grand Avenue, Des Moines, Iowa 50319. The employer shall provide adequate postage on appeals filed by mail. Appeals transmitted by facsimile that are received by the tax bureau after 11:59 p.m. central time shall be deemed filed as of the next regular business day.

23.52(4) Unless otherwise required, all determinations by the tax bureau will be sent by regular mail or email, depending on how the employer elected to receive correspondence. The determination will be dated, and the employer or other interested party shall have 30 days from the mailing date printed on the notice to appeal the determination. The employer has 15 days to appeal a Notice of Reimbursable Benefit Charges, Form 65-5324.

23.52(5) If the department concludes, upon reviewing an appeal, that the original determination is correct, the tax bureau may write to the employer and further explain the decision. If the employer still desires a hearing before an administrative law judge, the employer should notify the department within 30 days of the date of the letter from the department.

23.52(6) Upon receipt of a request for hearing, the tax bureau will ask the department of inspections and appeals to schedule a hearing for the employer. A copy of the request will be mailed to the employer. A copy of the file containing all relevant information regarding the issue of the appeal shall be forwarded to the administrative law judge. Documents that may be sent to the administrative law judge include a copy of the disputed decision, the employer's original letter of appeal, all relevant correspondence from the department, and the employer's letter requesting a hearing. All employer liability appeals shall be heard by an administrative law judge and shall be scheduled for hearing at the earliest possible date. Procedures for employer liability hearings are set out in rule 871—26.5(17A,96).

23.52(7) In those cases in which the department finds that a genuine controversy exists or has existed regarding an employing unit's liability for contributions on all or a part of its employees or, a rate appeal or other employer liability question and the case has been resolved against such employing unit, then no interest or penalty will accrue from the date of such controversy between the department and the employing unit until 30 days after the decision becomes final.

[**ARC 3303C**, IAB 8/30/17, effective 10/4/17]

871—23.53(96) Rate appeal and eligibility decision reversal.

23.53(1) An employer who appeals a rate notice or corrected rate notice within 30 days following the procedures outlined in rule 871—23.52(96) may have its rate recomputed based upon the reversal of a benefit eligibility decision under the following circumstances:

a. An employer may appeal on the grounds that benefit charges against the employer's account have been reversed by a decision issued subsequent to the rate computation date. The department will investigate and remove benefit charges, which have been reversed by a subsequent decision, from the computation and will issue a corrected rate notice to the employer.

b. The employer may appeal on the grounds that benefits charged against the employer's account may be reversed by a decision to be issued on a pending claim or charge-back appeal. The employer's rate will not be recomputed. However, the rate will not become final and the appeal may be reopened by the employer, in writing upon receipt of a decision reversing the allowance of benefits or relieving the employer of charges provided that the request to reopen the appeal is submitted within 30 days of the date of the next rate notice following the date of the decision. The charges will be removed from the computation of the original rate and a corrected rate notice will be issued. The employer must pay any contributions that become due at the disputed rate prior to the receipt of the decision reversing the benefit charges; however, a refund of any overpayment of contributions and interest paid by the employer as a result of the recomputation of the rate will be issued, subject to the three-year statute of limitations set out in Iowa Code section 96.14(5).

c. The employer's payment of contributions at the disputed rate in the circumstances described in 23.53(1)*"b"* will not be an acquiescence of the disputed rate.

d. The employer, in the circumstances described in 23.53(1)*"b,"* must file a separate appeal of each rate notice received that contains the disputed benefit charges. If the employer does not file a timely appeal of each affected rate notice, any appeal filed following receipt of a decision reversing the allowance of benefits will be considered as applying only to rate notices that were timely appealed and to the next rate notice.

e. If the employer appeals on the grounds that the benefits charged against the employer's account were paid to an employee who was still working for the employer in the same employment as in the base period of the claim, the department will remove the charges and will issue a corrected rate notice. However, the employer's appeal must have been made within 30 days of the date on the first rate notice received that included any of the disputed charges. Provided further that the issue of charging of benefits had not been previously adjudicated in either an appeal of the original claim notice or an appeal of a quarterly benefit charge statement.

23.53(2) Reserved.

871—23.54(96) Payment of disputed assessments.

23.54(1) Payment of a disputed assessment is held to be an acquiescence in the assessment only when a timely appeal is not filed.

23.54(2) An employing unit which has appealed a determination of liability, or a payment of contributions due, shall file quarterly contribution and payroll for all quarters for which the employer is held liable regardless of any appeal. Full payment of the disputed assessment or amount estimated to be owed by the employing unit shall be submitted.

[**ARC 3402C**, IAB 10/11/17, effective 11/15/17]

871—23.55(96) Burden of proof.

23.55(1) The burden of proof in all employer liability cases shall rest with the employer.

23.55(2) The burden of proof shall rest with an employing unit which employs any individual during any calendar year but which considers itself not an employer subject to the Act, to establish that it is not an employer subject to the Act by presenting proper records, including a record of the identity of the employees, number of individuals employed during each week, and the particular days of each week on which services have been performed, and the amount of wages paid to each employee.

23.55(3) The burden of proof in successorship and partial successorship cases for determinations and appeals shall rest with the employer that is appealing the determination of the department.

871—23.56(96) Informal settlement.

23.56(1) Pursuant to Iowa Code chapter 17A a controversy may, unless precluded by statute, at the discretion of the department be informally settled by mutual agreement of the department of workforce development and the person or employer who is or is about to be engaged in the controversy with the department. The settlement shall be effected by a written statement reciting the subject of the controversy and the proposed solution mutually agreed upon by the parties including a statement of the action to be taken, or to be refrained from, by each of the parties. The informal settlement shall constitute a waiver, by all parties, of the formalities to which they are entitled under the terms of Iowa Code chapter 17A, with respect to the specific fact situation which is the subject of the controversy.

Either party may initiate a proposal for informal settlement of the controversy by communicating a proposal to the other party before the contested hearing is convened.

23.56(2) If the parties agree to a settlement, the written statement shall be presented to the administrator of the division of unemployment insurance services for review and approval.

23.56(3) In the event a settlement is reached in a case which has been appealed to the courts, then the formal settlement will be presented to the appropriate district court. If an assessment of contributions or a decision upon which an assessment is based has become final without appeal, then the actual established contribution may be compromised by agreement of the parties and submission to the district court pursuant to Iowa Code section 96.14(5). Doubtful collectibility as contained in section 96.14(5) includes tax debts which are doubtful as to validity or as to collectibility. The department is not required to enter into any informal settlement or compromise with regard to any employer liability determination and may or may not do so at its own discretion.

871—23.57(96) Interest and penalty on contributions paid with adjustments submitted by employer.

23.57(1) If an employer, on its own motion, submits an adjustment for an error made on previously submitted wage detail and pays any additional contributions due on the adjustment when the employer submits the adjustment, no interest on the additional contributions will be charged if it is shown to the satisfaction of the department that the error on the original report and subsequent late payment of the contribution due on the adjustment was not the result of negligence, fraud, intentional disregard of the law or rules of the department.

23.57(2) If an employer submits an adjustment without payment, and payment is due, such employer will be assessed for the additional contributions plus interest as provided by law.

[**ARC 3402C**, IAB 10/11/17, effective 11/15/17]

871—23.58 Reserved.

871—23.59(96) Determination and assessment of estimated contributions and errors in reporting.

23.59(1) If the department finds from the examination of the employer's account that the contributions have been underpaid because of a department error in assigning the contribution rate, the additional contributions shall be paid within 30 days after the department notifies the employer; however, no interest or penalty will accrue until 30 days after the notification.

23.59(2) Assessment—failure to file quarterly contribution and payroll.

a. If any employing unit fails to file quarterly contribution and payroll as required, the department shall make an estimate based upon any information in its possession or that may come into its possession of the amount of wages paid for employment in the period or periods for which no wage detail was filed. The basis of such estimates shall compute and assess the amounts of employer contributions payable by the employing unit together with interest and penalty.

b. Whenever the department determines that the collection of contributions from an employer is in jeopardy and the employer has failed to file the necessary wages paid for the quarter for which such contributions are due and payable or have been declared due and payable prior to the reporting date set out in rule 871—23.8(96), the department shall prepare estimated reports.

c. Such estimates may be made by authorized personnel in the tax bureau and shall be referred to the collection unit.

This rule is intended to implement Iowa Code section 96.7.

[**ARC 3402C**, IAB 10/11/17, effective 11/15/17]

871—23.60(96) Accrual of interest and penalties.

23.60(1) An employer who fails to file wages paid to each of its employees for any period in the time and manner set forth in Iowa Code section 96.7 and rule 871—22.3(96) shall pay to the department a penalty in accordance with Iowa Code section 96.14(2).

23.60(2) The amount of the penalty for a delinquent or insufficient quarterly contribution and payroll shall be based on the total wages paid by the employer in the period for which the report was due. The penalty shall not be less than $35 for the delinquency or the insufficient wage detail not made sufficient within 30 days of a request to do so. Insufficient wage detail is defined as a quarterly submission that does not have all social security numbers, all corresponding names, total wages for each employee, or a reporting unit number. Wage detail submitted without a correct account number, federal employer identification number, labor market information, or wage detail submitted for an unemployment account that has not yet been established by the employer or agent may be considered insufficient.

23.60(3) Interest and penalty shall not accrue with respect to contributions required from an employer based upon wages for employment in those cases in which the employer's liability is based solely upon the provisions of Iowa Code section 96.19(16)*"g"* until 30 days after determination of such liability under the federal Unemployment Tax Act.

23.60(4) Interest and penalty shall not accrue in those cases where the department finds that, as a matter of equity and good conscience, the employer should not be required to pay interest.

23.60(5) Interest as provided under Iowa Code section 96.14 shall accrue 30 days after the quarterly billing to reimbursable employers.

23.60(6) The penalties applicable to contributory employers shall be applicable to employers who have been approved to make payments in lieu of contributions.

23.60(7) Payment checks not honored by bank. An employer is liable for interest for a check in payment of contributions which is not honored by the bank upon which it is drawn.

This rule is intended to implement Iowa Code section 96.14(2).

[**ARC 8711B**, IAB 5/5/10, effective 6/9/10; **ARC 3402C**, IAB 10/11/17, effective 11/15/17]

871—23.61(96) Collection of interest and penalties. When wage detail is filed with contributions paid but penalties and interest due, penalties and interest may be assessed and a lien filed in the same manner as for unpaid contributions.

[**ARC 3402C**, IAB 10/11/17, effective 11/15/17]

871—23.62(96) Rescission of interest and penalty.

23.62(1) Interest and penalty charges may be rescinded whenever an employer can provide documentary evidence to the satisfaction of the department that an inquiry in writing was directed to the department within 15 days following the end of the quarter for the contribution or payroll, untimely filed or paid, and such contributions are paid in full.

23.62(2) Penalty charges only may be rescinded whenever the employer can show documentary evidence that the wages paid to employees used to determine liability to the department were reported to another state in good faith and the contributions thereon were properly paid to the state to which the wages were reported and that said employees were fully insured during the period of unreported liability to this department.

[**ARC 3402C**, IAB 10/11/17, effective 11/15/17]

871—23.63(96) Cancellation of interest and penalty. The department may, at its discretion and for good cause, cancel interest and penalty upon written request for the waiver from the employer or an agent for the employer. Requests should be directed to the department at its administrative office. The employer will be advised if the request is denied.

In determining whether good cause has been shown, the department shall consider all relevant factors including but not limited to whether the party acted in the manner that a reasonably prudent individual would have acted under the same or similar circumstances, whether the party received timely notice of the need to act, whether there was administrative error by the department, whether there were factors outside the control of the party which prevented a timely action, the efforts made by the party to seek an extension of time by promptly notifying the department, the party's physical inability to take timely action, the length of time the action was untimely, and whether any other interested party has been prejudiced by the untimely action.

This rule is intended to implement Iowa Code section 96.14(2).

871—23.64(96) Refund of interest and penalty.

23.64(1) Interest or penalty may be refunded only when it has been erroneously paid or overpaid. Interest or penalty erroneously collected in excess of the amount due may be credited or refunded to the employing unit or other person(s) who paid such interest or penalty subject to the following limitations.

a. If the department determines that a claim for refund or credit is allowable in accordance with the Iowa Code and these rules, it shall so find and make an adjustment as follows:

b. The amount of the overpayment shall first be applied against any unpaid liability then due from or accrued against the employing unit. The remainder of such portion of the overpayment shall be refunded to the employing unit or other person(s) by whom it was paid, or its or their successor, administrators or executors.

23.64(2) Reserved.

871—23.65(96) Liens for unpaid contributions, interest, and penalties.

23.65(1) Filing of liens and notice of jeopardy assessments.

a. If wages are filed by an employer for the purpose of determining the amount of contribution due, or an assessment of contribution due, and the employer fails to pay any part of the contributions, interest and penalties due, a Notice of Assessment and Lien will be issued to the employer.

b. If, 30 days after a Notice of Assessment and Lien, or a Notice of Jeopardy Assessment, has been issued (see subrule 23.59(2)) and the employer has failed to make payment in full of the amounts that were assessed, the department may file a lien with the county recorder of the county in which the employer has its principal place of business, or with the county recorder of any county in which the employer has real or personal property.

c. The lien, known as a Notice of Lien, shall state the date of assessment, the employer's name, address and account number, and the amount due. The recorder shall record the Notice of Lien as provided in Iowa Code section 96.14(3).

23.65(2) When the Notice of Lien is duly filed and recorded, the amount stated shall be a lien upon the entire interest of the employer, legal or equitable, in any real property, and upon any personal property, tangible or intangible, located in any county where the Notice of Lien or copy is filed.

23.65(3) As provided in Iowa Code section 96.14(3), the lien shall attach as of the date the assessment is issued to the employer.

23.65(4) The transfer, through sale, exchange, or other method, of a major portion of the assets of a delinquent employer shall not defeat or impair the lien in favor of the department, and the person acquiring such assets shall be held liable for payment of all delinquent contributions, interest, and penalties due from the delinquent employer. The department shall be made a party to any foreclosure action involving any real or personal property against which the department has or may claim a lien.

23.65(5) Liens against out-of-state employers and resident employers who remove themselves from the state of Iowa may be obtained in accordance with section 96.14(6).

23.65(6) The department may, at its discretion and in accordance with Iowa Code section 96.14(3), make an assessment and file a lien in the recorder's office in the county or state where the employer resides. Liens shall be recorded in accordance with the law governing liens in the state where filed, and the costs shall be borne by the employer.

23.65(7) No employment security lien(s) shall be released without payment of the contributions secured except as follows:

a. It is shown to the department's satisfaction that the lien(s) was filed in error. If this is shown, the lien shall be at the expense of the department.

b. Release of the lien(s) is ordered by a judge having jurisdiction over same.

c. A release is necessary to facilitate payment to the department from proceeds of sale in an equity action.

d. A foreclosure action has been initiated by a secured creditor and it is demonstrated to the department's satisfaction all of the following:

(1) The lien of the secured creditor is properly perfected and is senior to the employment security lien.

(2) The property, both real and personal, does not exceed in value the amount of the secured lien on which the foreclosure is taken.

23.65(8) In such cases, the department may release its lien(s) but such release shall be only in respect to the property foreclosed upon by the secured creditor.

23.65(9) Interest and penalty secured by a lien may be compromised by the department at its discretion.

23.65(10) Upon payment of contributions, interest, penalty, and costs, the department shall execute a Satisfaction of Lien by filing it with the recorder's office for the county where the lien was filed. A copy of this satisfaction shall be provided to the employer.

This rule is intended to implement Iowa Code section 96.14(3).

[**ARC 3402C**, IAB 10/11/17, effective 11/15/17]

871—23.66(96) Jeopardy assessments.

23.66(1) If the department believes the collection of any contribution will be jeopardized by delay, the department may, whether or not the time otherwise prescribed by rule 871—23.8(96) for filing and paying any contribution has expired, immediately assess the contributions, together with all interest and penalty. The contributions, penalty and interest shall become immediately due and payable. The jeopardy assessment may be made by personal service upon the employer or the employer's agent by a representative of the department or civil officer of the state. Should immediate personal service not be possible, the jeopardy assessment shall be sent by mail to the employer's address of record and such mailing shall be a satisfactory service.

23.66(2) If, after a jeopardy assessment has been served, the amount assessed remains unpaid and no appeal has been filed by the employer, a notice of lien shall be recorded in the recorder's office for the county or counties in which the employer resides or owns property. A copy of the lien shall be mailed to the employer at the address of record.

23.66(3) If, at the time of service of a jeopardy assessment, the employer protests or disputes the correctness of the assessment, the employer may furnish to the department and the department may accept

a bond in an amount the department deems necessary but not to exceed double the amount of contributions due, provided the department is satisfied as to the security of the bond. So long as the bond remains in force and the assessment remains in dispute, the department shall not issue a distress warrant. If, after final adjudication of the jeopardy assessment, the employer fails to pay the assessed amount in full, the bond shall be forfeited to the extent necessary to satisfy the jeopardy assessment plus any accrued interest. Any overage shall be refunded to the employer by warrant or credit. If the bond is insufficient to pay the jeopardy assessment in full, the department may issue a distress warrant as provided in rule 871—23.67(96).

23.66(4) After a lien has been filed and the amount or any portion of the amount assessed and any additional accrued interest remains unpaid, the department may at any time issue a distress warrant instructing a sheriff or peace officer to levy upon and seize or attach any real or personal property of the employer in satisfaction of the amount assessed and secured by the lien.

This rule is intended to implement Iowa Code section 96.7(7).

[**ARC 3402C**, IAB 10/11/17, effective 11/15/17]

871—23.67(96) Distress warrants.

23.67(1) In addition to and as an alternative to any other remedy provided by the Iowa Code and these rules, the department may proceed to enforce its lien by issuing to the sheriff of any county or to any civil officer of the state of Iowa having proper jurisdiction a distress warrant commanding the sheriff or civil officer to levy upon and sell any real or personal property which may be found within its jurisdiction belonging to an employer who has defaulted in the payment of any sum determined by the department to be due from the employer, and to pay the proceeds of the sale over to the clerk of district court in and for the county in which the property is found. All costs of the execution shall be charged to the employer.

23.67(2) The sale shall be held after the property has been levied upon, the period of redemption has expired, and the department has petitioned for and been granted a condemnation order in the district court in and for the county in which the property was levied upon, in accordance with the Iowa Code and the Iowa Rules of Civil Procedure.

23.67(3) No property belonging to the employer shall be exempt from execution.

23.67(4) Whenever a warrant is returned not satisfied in full, the department may proceed to issue a new warrant in the amount remaining unsatisfied, together with any additional interest, penalties, and costs, as provided above.

871—23.68(26USC6402) Collection of covered unemployment compensation. Pursuant to 26 U.S.C. 6402(f), the department shall utilize the Treasury Offset Program in order to collect covered unemployment compensation.

This rule is intended to implement 26 U.S.C. 6402(f).

[**ARC 3529C**, IAB 12/20/17, effective 1/24/18]

871—23.69(96) Injunction for nonpayment or failure to provide required information.

23.69(1) In addition or as an alternative to any other remedy provided in Iowa Code chapter 96 and this rule, the department may proceed to enjoin an employer who has refused or failed to pay any contributions, interest, or penalty or who has failed to file or provide any information required by the department.

23.69(2) Discretion as to whether or not to seek an injunction rests with the department.

23.69(3) When the department determines that an injunction should be obtained, the department will send by certified mail or by personal service to the employer at the last-known address for the employer a notice which shall provide the following information:

a. That the department plans to seek an injunction against the employer.

b. The period(s) for which there are delinquent contributions, interest, and penalty due or for which required information has not been provided.

c. The amount of indebtedness.

d. That the injunction will enjoin the employer from operating any businesses in the state of Iowa until one of the following conditions is met:

(1) The entire indebtedness is paid.

(2) The employer files a full and sufficient bond.

(3) The employer has entered into a court-approved plan providing for payment of the indebtedness.

e. The employer has ten days in which to respond to the department.

23.69(4) Upon expiration of the ten days following the notice, if the employer has not responded satisfactorily, the department shall file with the district court for the county in which the employer resides a petition requesting a hearing and an order granting the injunction.

23.69(5) Upon the issuance of a court order granting the injunction, the department shall proceed to periodically check to ensure that the employer is complying with the injunction order. Should the department find that the employer is not in compliance, it will ask the court for a finding of contempt and will ask the court to impose appropriate punishment.

23.69(6) Upon payment in full of the delinquent contributions, interest, and penalty, and the filing of all delinquent wage detail, the department shall have the injunction dissolved.

23.69(7) If the employer, as the result of a court-approved payment plan, is relieved by the court of the injunction and the employer fails to perform strictly as set out in the plan, the department may, at its discretion, ask the court to reinstate the injunction upon notice and hearing.

23.69(8) Any costs of these actions shall be borne by the employer.

[**ARC 3562C**, IAB 1/3/18, effective 2/7/18]

871—23.70(96) Nonprofit organizations.

23.70(1) Any nonprofit organization can be considered eligible to reimburse the Iowa unemployment compensation fund in lieu of paying contributions. Any nonprofit organization wishing to be considered as a reimbursable employer shall file as provided under Iowa Code section 96.7 the election to reimburse the fund with the department for its consideration.

23.70(2) The election to reimburse must be signed by an authorized official of the nonprofit organization and shall be accompanied by:

a. A letter of intent indicating the organization's desire to be considered for reimbursable status.

b. A copy of the organization's letter of 501(c)(3) exemption from the Internal Revenue Service. If the organization does not have a 501(c)(3) letter at the time of the filing of its election to become a reimbursable employer, it may file a written request with the department for an extension of time setting forth the reason for the request, and the department may grant such extension not to exceed 180 days. Included with this request for extension of time should be a copy of the application for exemption, Election to Make Payments in Lieu of Contributions, or evidence that the request for 501(c)(3) exemption has been made.

c. A corporate charter or other documents that brought the organization into being.

23.70(3) All requests by nonprofit organizations wishing to be considered for reimbursable status shall be filed on Form 68-0463 and that form, along with the organization's 501(c)(3) Internal Revenue Service letter of exemption, except as otherwise provided in subrule 23.70(2), shall be directed to the attention of the tax bureau. The request for reimbursable status will be examined by an authorized representative.

23.70(4) to **23.70(5)** Reserved.

23.70(6) An organization not possessing a 501(c)(3) nonprofit tax exemption at the time its election is submitted shall be granted reimbursable status provided that the exemption is obtained and a copy is filed with the department within 180 days of the date the election is submitted. Should the organization fail to obtain an exemption within 180 days, the election shall be invalid and the organization shall be required to pay contributions upon all taxable wages paid during the period covered by the invalid election at the contribution rate it would have had if the invalid election had not been made. A new election may not be made by the organization until it has obtained a 501(c)(3) nonprofit tax exemption and has filed a new election. The new election shall not be retroactive to cover the period of the invalid election. Benefits reimbursed during the invalid election shall be used to offset the contributions due, and any excess shall be refunded to the organization.

23.70(7) to **23.70(9)** Reserved.

23.70(10) The department may for good cause extend the period within which a notice of election to become a reimbursable employer or a notice to terminate reimbursable status must be filed and permit an election to be retroactive.

23.70(11) Any nonprofit organization that terminates its election to reimburse the fund shall continue to be liable to reimburse the fund for benefits which are paid based on wages earned during the effective period of the employer's Election to Make Payments in Lieu of Contributions. All benefits charges based on wages paid after the date of the approval of the change of status to a contributory employer shall be charged to the employer's contributory account.

a. A nonprofit organization changing its tax status from reimbursable to contributory or contributory to reimbursable will be given a new employer account number. A nonprofit organization terminating its election to reimburse the fund shall be treated as a newly covered employer for the purpose of establishing a contribution rate, except as provided in paragraph *"b."*

b. The experience, while under each tax status, will not be combined for rate computation purposes unless the department finds, or has reason to believe, that the nonprofit organization changing from a reimbursable status to a contributory status is unable to reimburse the fund for benefits outstanding at the time of the change in status, plus any benefits paid after the change in status that are based on wages paid while the nonprofit organization was still in a reimbursable status. The department may then, at its own option, use the unreimbursed benefits in the computation of the nonprofit organization's contribution rate and transfer any contributions collected, above what the nonprofit organization would have paid as a newly covered employer, from the nonprofit organization's contributory account to the reimbursable account to apply against the unreimbursed benefits.

23.70(12) Any nonprofit organization which elects to change its status from contributory to reimbursable shall continue to be liable for charges on all benefits based on wages paid when the nonprofit organization was a contributory employer. These charges will be charged to the nonprofit organization's contributory account. The experience of the contributory account will not be merged with the nonprofit organization's reimbursable account.

23.70(13) In the event that a reimbursable nonprofit organization succeeds to a contributory employer, such successor employer shall not receive a transfer of account balance from the predecessor account. The account balance shall remain with the predecessor account and be used as an offset against any claims attributable to that account. If an employer, whether or not the employer may elect to be reimbursable, becomes a successor to a reimbursable nonprofit organization, the successor employer shall become obligated for the reimbursable nonprofit organization's unpaid benefit charges in the event that the reimbursable nonprofit organization cannot meet this obligation. The successor employer shall also be liable to reimburse the department, whether or not the successor employer is reimbursable or is eligible to elect to become reimbursable, for benefits paid after the date of the sale or transfer that are based on wages paid by the reimbursable nonprofit organization prior to the date of the sale or transfer.

23.70(14) In the event a reimbursable nonprofit organization discontinues business, the reimbursable nonprofit organization will continue to be liable to reimburse the fund in an amount equivalent to the amount of regular unemployment benefits and one-half of the extended benefits paid to an individual that is attributable to wages paid by the reimbursable nonprofit organization prior to the discontinuance of business.

This rule is intended to implement Iowa Code section 96.7(9).

[**ARC 8711B**, IAB 5/5/10, effective 6/9/10; **ARC 3303C**, IAB 8/30/17, effective 10/4/17; **ARC 3401C**, IAB 10/11/17, effective 11/15/17; **ARC 3562C**, IAB 1/3/18, effective 2/7/18]

871—23.71(96) Governmental entity—definition.

23.71(1) The definition of a governmental entity is a state, a state instrumentality, a political subdivision or a political subdivision instrumentality, or a combination of one or more of the preceding. An instrumentality of one or more states or political subdivisions may be a part of a state or a political subdivision or it may be independent of political entities and thereby a separate governmental entity. The definition of a governmental entity is held to include but not be limited to:

a. An organization or any division, department, agency, commission, or board of a state or political subdivision established by proper authorities, authorized and created under constitutional provisions or

statutes, for the purpose of carrying out a portion of the function of government, including both governmental and proprietary functions.

b. An instrumentality is one which is organized to carry on some function or purpose of government for a state or a political subdivision. There is expressed or implied statutory or other authority creating it. It is an independent legal entity, with power to hire, supervise, and discharge its own employees. Generally, it can sue or be sued in its own name, to hold, convey real and personal property and borrow money.

c. Political subdivisions include counties, cities, municipalities, towns, villages, townships, as well as irrigation, flood control, sanitation, utility, reclamation, drainage, improvement, and public school districts and authorities or any combination of these and similar governmental entities within the state of Iowa.

d. Instrumentalities shall include departments, boards, agencies, commissions, county or municipal corporations, associations and organizations of a state or a political subdivision of the state when it is operated by virtue of the authority, power, or powers conferred upon it by a state or political subdivision of the state, or when they are controlled, supervised or receive direction, expressed or implied, from a state or political subdivision of a state or such rights are vested in public authority or authorities, or the state or the political subdivision of a state has the right, expressed or implied, to control or direct the policy, operation or to influence the organizations or action of individuals, parties or interests that control those who manage or administer the affairs of such organizations.

23.71(2) In cases involving the status of an organization as to whether it is a state, a state instrumentality, a political subdivision of a state or a political subdivision instrumentality, the following factors may be taken into account:

a. Whether the revenues are subject to control by a state, a political subdivision of a state or an instrumentality of either.

b. They may have broad powers of taxation, appropriation or authority to levy special assessments on the land located in the district which will stand as a lien upon the property assessed.

c. It is created or existing by virtue of a state, a political subdivision of the state or instrumentality of either, which operates in the public interest, without profit to private persons, and whose purpose is presumed to be a public benefit and conducive to the public health, convenience and welfare.

d. Whether it is organized or used for a governmental purpose, or an aid in the function of government or it performs a governmental function.

e. Whether there is an expressed or implied statutory or other authority necessary or existing for the creation or use of the organization.

23.71(3) The term "employment" does not apply to services performed for this state, a political subdivision of this state, an Indian tribe or an instrumentality of either by an individual who is: an elected official; a member of a legislative body; a member of the judiciary of a state or political subdivision; a member of the state national guard, air national guard, or armed forces reserve; an employee on a temporary-duty basis in the case of fire, storm, snow, earthquake, flood or similar emergency; or in a position designated as a major nontenured policymaking or advisory position pursuant to state law if the position does not ordinarily require duties of more than eight hours per week.

a. The exclusion for a governmental entity or Indian tribe from coverage of unemployment of the services of an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency applies only to those individuals who are hired or pressed into service to assist directly with an emergency or urgent distress associated with an emergency, including such temporary tasks as firefighting, rescue, removal of storm debris, cleaning up mud and flood debris, restoration of public facilities, snow removal and road clearance. Volunteer firefighters and police officers, and snow removal personnel, who are called to duty in emergency situations such as fires, floods, emergency snow removal or similar public emergency to perform services on a temporary basis for which they receive pay, are excluded from coverage. *City of Charles City v. Iowa Department of Job Service*, Law No. 2262, District Court for Floyd County. The exclusion does not apply to permanent employees whose usual responsibilities include emergency situations.

b. The provision which excludes an individual employed by a governmental entity or Indian tribe who exercises duties in a position defined in state law as a major nontenured policymaking or advisory position, or a policymaking or advisory position which ordinarily does not require duties of more than eight

hours per week, covers those individuals holding positions designated by, or pursuant to, state law as a policymaking or advisory position. Political subdivisions which have authority to enact ordinances or resolutions without recourse to the state legislature but under authority of state law may also establish and define such positions. The positions may qualify for the exclusion if the political subdivision has enacted an ordinance or resolution creating or designating one of its positions as policymaking or advisory, provided power to make the ordinance or resolution is authorized or permitted by the laws of the state. If the state law or local ordinance or resolution properly designated the positions as policymaking or advisory, the exclusion is clearly applicable. Where the law or the ordinance does not clearly and specifically so categorize or label the position, other pertinent factors such as job descriptions, the qualification of individuals considered for and appointed to the position and the responsibilities involved shall be taken into account in determining the character of the position for purposes of applying the exclusion.

(1) "Policymaker" is defined as generally referring to the determination of the direction, emphasis and scope of action in the development of, and the administration of, governmental programs. Such responsibilities are confined to and inherent in jobs of the higher echelons of government.

(2) An "advisory position" is one which advises established governmental agencies and officers with respect to policy, program and administration without having authority to implement the recommendations.

(3) The word "major" in the phrase "major nontenured policymaking or advisory position" refers to high level governmental positions usually filled by appointment by the chief executive of the political entity (governor, mayor, etc.), or a council, and which involves responsibilities affecting the entire political entity, whether it be the state, county or city.

(4) The term "nontenured" is used in its usual meaning to mean that the position is not covered by merit system or civil service law or rules with respect to duration of appointment to the service.

(5) Service in a policymaking or advisory position where the performance of the duties ordinarily does not require more than eight hours per week is exempted. It makes no difference whether the position is tenured or not. If the position ordinarily requires more than eight hours per week, the exclusion does not apply. The number of hours required should be determined by reference to the law establishing the position and the actual time spent by incumbents.

c. An elected official includes an individual appointed to serve the unexpired term of an elected position. Such an individual's services for such period are excluded because the individual is performing excluded services.

d. An official elected by a body other than the public, such as by a vote by the legislature, board of supervisors, council, school board or trustees, to perform services for a government entity, such individual is not excluded from coverage.

e. Services performed for the state national guard or the air national guard are excluded from coverage of the employment security law only as to the services in the individual's "military" capacity. It does not apply to any service performed in any other capacity.

f. If a member of the state national guard or air national guard is employed in a civilian capacity performing services for either organization as distinguished from "military" service, the civilian service would be covered as an employee of a governmental entity to the same extent as any other employee.

23.71(4) Exemption from "employment" for individuals performing services for a governmental entity or Indian tribe as part of an unemployment work relief or work training program. Services performed by an individual for a government entity or Indian tribe for the purpose of qualifying or repaying a welfare or relief grant will not be considered "employment" provided that:

a. The major purpose of the program under which the work is performed is to relieve individuals from their unemployment or poverty.

b. The government entity does not pay the welfare or relief grant directly to the individual but instead pays items such as rent, power bills, medical bills, etc., for the individual.

c. The services performed by the individuals do not displace regularly employed workers of the government entity.

This rule is intended to implement Iowa Code sections 96.7(8) and 96.19(18)*"a"*(6)(e) and (g).

871—23.72(96) Governmental entity—elective coverage and liability.

23.72(1) Any governmental entity may elect to be a governmental contributory employer by filing for elective coverage as a governmental contributory employer. The rules governing the selection of coverage status for governmental entities shall apply to Indian tribes. Any governmental entity failing to file such an election will be considered as a governmental reimbursable employer. The application must be signed by a duly constituted governmental official. The election shall be approved if the department finds that:

a. It is an application for all employees of the entity.

b. The applicant is a "governmental entity."

c. It sets forth the name and address of the entity.

23.72(2) The effective date of an elective coverage agreement filed by a government entity is the first day of the calendar year in which the election was filed.

23.72(3) An agreement for elective coverage shall be continued in effect from period to period unless a written application for termination has been filed with the department 30 days before the beginning of the taxable year for which such termination shall first be effective following the initial one-year period of coverage.

23.72(4) An applicant may withdraw an application for elective coverage prior to final approval of the application. The department may, upon written request of the applicant, cancel an elective coverage agreement which has been finally approved if the applicant shows that the application was submitted through justifiable mistake, or error, or was submitted by a person not having proper authorization to bind the applicant.

23.72(5) If a governmental entity is succeeded in whole or in part by another governmental entity, the successor may elect to continue the elective coverage agreement of the predecessor or may elect to terminate the elective coverage agreement of the predecessor. If the successor governmental entity was, prior to the acquisition of the predecessor, a governmental entity under an approved elective coverage agreement, the elective coverage agreement of the predecessor shall be continued to the same extent as the elective coverage agreement of the successor. If the successor governmental entity was, prior to the acquisition of the predecessor, a governmental entity not under an approved elective coverage agreement, the successor shall meet the requirements of this section if it elects to continue the elective coverage agreement of the predecessor.

23.72(6) The contribution rate of a governmental contributory employer shall be determined by the ranking of the governmental contributory employer's percentage of excess when compared to all other governmental contributory employers' percentage of excesses and the rate assigned to each rank as determined by the base rate of all governmental contributory employers. The base rate is determined by adding or subtracting the difference between the benefits charged and the contributions paid by governmental contributory employers since January 1, 1980 (adjusted if necessary by excess contributions from calendar years 1978 and 1979), to or from the total benefits charged to governmental contributory employers during the preceding calendar year and dividing this sum by the total taxable wages reported by governmental contributory employers during the same calendar year. The contribution rate of a governmental contributory employer shall be payable on the taxable wages paid by the governmental contributory employer.

23.72(7) Liability upon the sale, transfer or discontinuance of a reimbursable governmental employer.

a. If a governmental reimbursable employer sells or otherwise transfers its enterprise, business, or operation to a subsequent employing unit, and the subsequent employing unit is determined to be a successor employer, the successor employer shall become liable to the department for the predecessor governmental reimbursable employer's benefit charges that are unpaid as of the date of the sale or transfer in the event that the predecessor governmental reimbursable employer cannot meet this obligation. The successor employer shall also be liable to reimburse the department, whether or not the successor employer is reimbursable or is eligible to elect to become reimbursable, for benefits paid after the date of the sale or transfer that are based on wages paid by the predecessor governmental reimbursable employer prior to the date of the sale or transfer.

b. If a reimbursable instrumentality of either a state or a political subdivision is discontinued other than by sale or transfer, the state or the political subdivision shall reimburse the department for the

reimbursable instrumentality's benefit charges that are unpaid at the time the reimbursable instrumentality was discontinued. In addition, the state or the political subdivision shall be liable to reimburse the department for benefits paid after the discontinuance of the reimbursable instrumentality that are based on wages paid by the reimbursable instrumentality prior to the discontinuance.

This rule is intended to implement Iowa Code section 96.7(8).

[**ARC 3562C**, IAB 1/3/18, effective 2/7/18]

871—23.73(96) Governmental entities—delinquent accounts.

23.73(1) Any governmental entity which is an employer and which becomes delinquent in the payment of contributions or the reimbursement of benefits shall be assessed for the same together with any interest and penalty due thereon.

23.73(2) Contributions are due within 30 days of the end of the quarter for which they are incurred. Reimbursable benefit payments are due 30 days after the date of the statement.

23.73(3) If an amount due from a governmental entity of this state remains due and unpaid for a period of 120 days after the due date, the department shall take action as necessary to collect the amount and shall levy against any funds due the governmental entity from the state treasurer, director of the department of revenue, or any other official or agency of this state or against an account established by the entity in any bank. The official, agency or bank shall deduct the amount certified by the department from any accounts or deposits or any funds due the delinquent governmental entity without regard to any prior claim and shall promptly forward the amount to the department for the fund. However, the department shall notify the delinquent entity of the department's intent to file a levy by certified mail at least ten days prior to filing the levy on any funds due the entity from any state official or agency.

This paragraph is an exact quote from 1979 Iowa Acts, chapter 33, section 25. It is being used as a rule because it conflicts with the preceding paragraph in Iowa Code chapter 96. The preceding paragraph in section 96.14(3) states delinquency as a period exceeding two calendar quarters. The above period of 120 days is the most recent expression of the legislature.

This rule is intended to implement Iowa Code section 96.14(3) and 1979 Iowa Acts, chapter 33.

871—23.74 to **23.81** Reserved.

871—23.82(96) Definition of construction employer.

23.82(1) Construction. The department will utilize the North America Industry Classification System manual (2017 edition) to determine which employers will be classified as construction. The manual is available on the Internet to view or download at www.census.gov/eos/www/naics.

a. The construction sector is comprised of establishments primarily engaged in the construction of buildings and other structures, heavy construction (except buildings), additions, alterations, reconstruction, installation, and maintenance and repairs. Establishments engaged in demolition or wrecking of buildings and other structures, clearing of building sites, and sale of materials from demolished structures are also included. This sector also includes those establishments engaged in blasting, test drilling, landfill, leveling, earthmoving, excavating, land drainage, and other land preparation. The industries within this sector have been defined on the basis of their unique production processes. As with all industries, the production processes are distinguished by their use of specialized human resources and specialized physical capital. Construction activities are generally administered or managed at a relatively fixed place of business, but the actual construction work is performed at one or more different project sites. Employers that provide workers primarily for construction will be classified as construction employers.

b. This sector is divided into three subsectors of construction activities: (1) building construction and land subdivision and land development; (2) heavy construction (except buildings), such as highways, power plants, and pipelines; and (3) construction activity by special trade contractors.

c. Establishments classified in Subsector 233, Building, Developing, and General Contracting, and Subsector 234, Heavy Construction, usually assume responsibility for an entire construction project, and may subcontract some or all of the actual construction work. Operative builders who build on their own account for sale and land subdividers and land developers, who engage in subdividing real property into lots for sale, are included in Subsector 233, Building, Developing, and General Contracting. (Special trade

contractors are included in Subsector 234, Heavy Construction, if they are engaged in activities primarily relating to heavy construction, such as grading for highways.) Establishments included in these subsectors operate as general contractors, design-builders, engineer-constructors, joint-venture contractors, and turnkey construction contractors. Establishments identified as construction management firms are also included.

d. Establishments classified in Subsector 235, Special Trade Contractors, are primarily engaged in specialized construction activities, such as plumbing, painting, and electrical work, and work for builders and general contractors under subcontract or directly for project owners. Establishments engaged in demolition or wrecking of buildings and other structures, dismantling of machinery, excavating, shoring and underpinning, anchored earth retention activities, foundation drilling, and grading for buildings are also included in this subsector.

e. "Force account" construction is construction work performed by an establishment primarily engaged in some business other than construction, for its own account and use, and by employees of the establishment. This activity is not included in this industry sector unless the construction work performed is the primary activity of a separate establishment of the enterprise.

f. The installation of prefabricated building equipment and materials, such as elevators and revolving doors, is classified in the construction sector. Installation work incidental to sales by employees of a manufacturing or retail establishment is classified as an activity of those establishments.

23.82(2) The term "construction" includes, but is not limited to:

a. Land subdividing and land development. Establishments primarily engaged in subdividing real property into lots or developing lots for sale.

b. Residential building construction.

(1) Single-family housing construction. Establishments primarily responsible for the entire construction (i.e., new work, additions, alterations, and repairs) of single-family residential housing units.

Building alterations, single-family—general contractors
Building construction, single-family—general contractors
Custom builders, single-family houses—general contractors
Designing and erecting, combined: single-family houses—general contractors
Home improvements, single-family—general contractors
House construction, single-family—general contractors
House: shell erection, single-family—general contractors
Mobile home repair, on site—general contractors
Modular housing, single-family (assembled on site)—general contractors
One-family house construction—general contractors
Prefabricated single-family houses erection—general contractors
Premanufactured housing, single-family (assembled on site)—general contractors
Remodeling buildings, single-family—general contractors
Renovating buildings, single-family—general contractors
Repairing buildings, single-family—general contractors
Residential construction, single-family—general contractors
Row house (single-family) construction—general contractors
Town house construction—general contractors

(2) Multifamily housing construction. Establishments primarily responsible for the entire construction (i.e., new work, additions, alterations and repairs) of multifamily residential housing units.

Apartment building construction—general contractors
Building alterations, residential: except single-family—general contractors
Building construction, residential: except single-family—general contractors
Custom builders, residential: except single-family—general contractors
Designing and erecting, combined: residential, except single-family—general contractors
Dormitory construction—general contractors
Home improvements, residential: except single-family—general contractors
Prefabricated building erection, residential: except single-family—general contractors

Remodeling buildings, residential: except single-family—general contractors
Renovating buildings, residential: except single-family—general contractors
Repairing buildings, residential: except single-family—general contractors
Residential construction, except single-family—general contractors

c. Nonresidential building construction.

(1) Manufacturing and industrial building construction. Establishments primarily responsible for the entire construction (i.e., new work, additions, alterations and repairs) of manufacturing and industrial buildings.

Building alterations, industrial and warehouse—general contractors
Building components manufacturing plant construction—general contractors
Building construction, industrial and warehouse—general contractors
Clean room construction—general contractors
Cold storage plant construction—general contractors
Commercial warehouse construction—general contractors
Custom builders, industrial and warehouse—general contractors
Designing and erecting, combined: industrial—general contractors
Dry cleaning plant construction—general contractors
Factory construction—general contractors
Food products manufacturing or packing plant construction—general contractors
Grain elevator construction—general contractors
Industrial building construction—general contractors
Industrial plant construction—general contractors
Paper pulp mill construction—general contractors
Pharmaceutical manufacturing plant construction—general contractors
Prefabricated building erection, industrial—general contractors
Remodeling buildings, industrial and warehouse—general contractors
Renovating buildings, industrial and warehouse—general contractors
Repairing buildings, industrial and warehouse—general contractors
Truck and automobile assembly plant construction—general contractors
Warehouse construction—general contractors

(2) Commercial and industrial building construction. Establishments primarily responsible for the entire construction (i.e., new work, additions, alterations and repairs) of commercial and industrial buildings.

Administration building construction—general contractors
Amusement building construction—general contractors
Auditorium construction—general contractors
Bank building construction—general contractors
Building alterations, nonresidential: except industrial and warehouses—general contractors
Building construction, nonresidential: except industrial and warehouses—general contractors
Casino construction—general contractors
Church, synagogue and related building construction—general contractors
Civic center construction—general contractors
Commercial building construction—general contractors
Custom builders, nonresidential: except industrial and warehouses—general contractors
Designing and erecting, combined: commercial—general contractors
Dome construction—general contractors
Farm building construction, except residential—general contractors
Fire station construction—general contractors
Garage construction—general contractors
Hospital construction—general contractors
Hotel construction—general contractors
Institutional building construction, nonresidential—general contractors

Mausoleum construction—general contractors
Motel construction—general contractors
Municipal building construction—general contractors
Museum construction—general contractors
Office building construction—general contractors
Passenger and freight terminal building construction—general contractors
Post office construction—general contractors
Prefabricated building erection, nonresidential: except industrial and warehouses—general contractors
Prison construction—general contractors
Remodeling buildings, nonresidential: except industrial and warehouses—general contractors
Renovating buildings, nonresidential: except industrial and warehouses—general contractors
Repairing buildings, nonresidential: except industrial and warehouses—general contractors
Restaurant construction—general contractors
School building construction—general contractors
Service station construction—general contractors
Shopping center construction—general contractors
Silo construction, agricultural—general contractors
Stadium construction—general contractors
Store construction—general contractors

d. Highway, street, bridge and tunnel construction.

(1) Highway and street construction. Establishments primarily responsible for the entire construction (i.e., new work, reconstruction, or repairs) of highways (except elevated), streets, roads, or airport runways, and establishments identified as highway and street construction management firms, and establishments identified as special trade contractors engaged in performing subcontract work primarily related to highway and street construction.

Airport runway construction—general contractors
Alley construction—general contractors
Asphalt paving; roads, public sidewalks and streets—contractors
Concrete construction; roads, highways, public sidewalks, and streets—contractors
Grading for highways, streets and airport runways—contractors
Guardrail construction on highways—contractors
Highway construction, except elevated—general contractors
Highway signs, installation of—contractors
Parkway construction—general contractors
Paving construction—contractors
Resurfacing streets and highways—contractors
Road construction, except elevated—general contractors
Sidewalk construction, public—contractors
Street maintenance or repair—contractors
Street paving—contractors

(2) Bridge and tunnel construction. Establishments primarily responsible for the entire construction (i.e., new work, reconstruction, or repairs) of bridges, viaducts, elevated highways and tunnels, and establishments identified as bridge and tunnel construction management firms, and establishments identified as special trade contractors primarily engaged in performing subcontract work related to bridge and tunnel construction.

Abutment construction—general contractors
Bridge construction—general contractors
Causeway construction on structural supports—general contractors
Highway construction, elevated—general contractors
Overpass construction—general contractors
Trestle construction—general contractors
Tunnel construction—general contractors

Underpass construction—general contractors
Viaduct construction—general contractors

e. Other heavy construction.

(1) Water, sewer, and pipeline construction. Establishments primarily responsible for the entire construction (i.e., new work, reconstruction, rehabilitation or repairs) of water mains, sewers, drains, gas mains, natural gas pumping stations, and gas and oil pipelines, and establishments identified as water, sewer and pipeline construction management firms, and establishments identified as special trade contractors engaged in activities primarily related to water, sewer, and pipeline construction.

Aqueduct construction—general contractors
Conduit construction—contractors
Distribution lines (oil and gas field) construction—general contractors
Gas main construction—general contractors
Manhole construction—contractors
Natural gas compressing station construction—general contractors
Pipe laying—general contractors
Pipeline construction—general contractors
Pipeline wrapping—contractors
Pumping station construction—general contractors
Sewage collection and disposal line construction—general contractors
Sewer construction—general contractors
Water main line construction—general contractors

(2) Power and communication transmission line construction. Establishments primarily responsible for the entire construction (i.e., new work, reconstruction, rehabilitation or repairs) of electric power and communication transmission lines and towers, radio and television transmitting/receiving towers, cable laying, and cable television lines, and establishments identified as power and communication transmission line construction management firms, and establishments identified as special trade contractors engaged in activities primarily related to power and communication line construction.

Cable laying construction—contractors
Cable television line construction—contractors
Pole line construction—general contractors
Power line construction—general contractors
Telegraph line construction—general contractors
Telephone line construction—general contractors
Television and radio transmitting tower construction—general contractors
Transmission line construction—general contractors

(3) Industrial nonbuilding structure construction. Establishments primarily responsible for the entire construction (i.e., new work, reconstruction, rehabilitation or repairs) of heavy industrial nonbuilding structures, such as chemical complexes, or facilities, cement plants, petroleum refineries, industrial incinerators, ovens, kilns, power plants (except hydroelectric plants), and nuclear reactor containment structures, and establishments identified as industrial nonbuilding construction management firms, and establishments identified as special trade contractors engaged in activities primarily related to industrial nonbuilding construction.

Chemical complex or facilities construction—general contractors
Coke oven construction—general contractors
Discharging station construction, mine—general contractors
Furnace construction for industrial plants—general contractors
Industrial incinerator construction—general contractors
Industrial plant appurtenance construction—general contractors
Kiln construction—general contractors
Light and power plant construction—general contractors
Loading station construction, mine—general contractors
Mine loading and discharging station construction—general contractors

Mining appurtenance construction—general contractors
Nuclear reactor containment structure construction—general contractors
Oil refinery construction—general contractors
Oven construction, bakers'—general contractors
Oven construction for industrial plants—general contractors
Petrochemical plant construction—general contractors
Petroleum refinery construction—general contractors
Power plant construction—general contractors
Tipple construction—general contractors
Washeries construction, mining—general contractors

(4) All other heavy construction. Establishments primarily responsible for the entire construction (i.e., new work, reconstruction or repairs) of heavy nonbuilding construction projects (except highway, street, bridge, tunnel, water lines, sewer lines, pipelines, and power and communication transmission lines), and industrial nonbuilding structures, and establishments identified as all other heavy construction management firms, and establishments primarily engaged in construction equipment rental with an operator, and establishments identified as special trade contractors engaged in activities primarily related to all other heavy construction.

Athletic field construction—general contractors
Blasting, except building demolition—contractors
Breakwater construction—general contractors
Bridle path construction—general contractors
Brush clearing or cutting—contractors
Caisson drilling—contractors
Canal construction—general contractors
Channel construction—general contractors
Channel cutoff construction—general contractors
Clearing of land—general contractors
Cofferdam construction—general contractors
Cutting right-of-way—general contractors
Dam construction—general contractors
Dike construction—general contractors
Dock construction—general contractors
Drainage project construction—general contractors
Dredging—general contractors
Earthmoving, not connected with building construction—general contractors
Flood control project construction—general contractors
Golf course construction—general contractors
Harbor construction—general contractors
Heavy equipment rental with an operator—contractors
Hydroelectric plant construction—general contractors
Irrigation projects, construction—general contractors
Jetty construction—general contractors
Land clearing—contractors
Land drainage—contractors
Land leveling (irrigation)—contractors
Land reclamation—contractors
Levee construction—general contractors
Lock and waterway construction—general contractors
Marine construction—general contractors
Missile facilities construction—general contractors
Pier construction—general contractors
Pile driving—general contractors

Pond construction—general contractors
Railroad construction—general contractors
Railway roadbed construction—general contractors
Reclamation projects construction—general contractors
Reservoir construction—general contractors
Revetment construction—general contractors
Rock removal-underwater—contractors
Sewage treatment plant construction—general contractors
Ski tow erection—general contractors
Soil compacting service—contractors
Submarine rock-removal—general contractors
Subway construction—general contractors
Tennis court construction, outdoor—general contractors
Timber removal-underwater—contractors
Trail building—general contractors
Trailer camp construction—general contractors
Trenching—contractors
Waste disposal plant construction—general contractors
Water power project construction—general contractors
Water treatment plant construction—general contractors
Waterway construction—general contractors
Wharf construction—general contractors

f. Plumbing, heating and air conditioning contractors. Establishments primarily engaged in one or more of the following: (1) installing plumbing, heating, and air-conditioning equipment; (2) servicing plumbing, heating, and air-conditioning equipment; and (3) the combined activity of selling and installing plumbing, heating, and air-conditioning equipment. The plumbing, heating, and air-conditioning work performed includes new work, additions, alterations, and maintenance and repairs.

Air system balancing and testing—contractors
Air conditioning, with or without sheet metal work—contractors
Boiler cleaning—contractors
Boiler erection and installation—contractors
Drainage system installation (cesspool and septic tank)—contractors
Dry well (cesspool) construction—contractors
Fuel oil burner installation and servicing—contractors
Furnace repair—contractors
Gasline hookup—contractors
Heating equipment installation—contractors
Heating, with or without sheet metal work—contractors
Lawn sprinkler system installation—contractors
Mechanical contractors
Piping, plumbing—contractors
Plumbing and heating—contractors
Plumbing repair—contractors
Plumbing, with or without sheet metal work—contractors
Solar heating apparatus—contractors
Sprinkler system installation—contractors
Steam fitting—contractors
Sump pump installation and servicing—contractors
Ventilating work, with or without sheet metal work—contractors
Water pump installation and servicing—contractors
Water system balancing and testing—contractors
Work combined with heating or air conditioning—contractors

g. Painting and wall covering contractors. Establishments primarily engaged in interior or exterior painting and interior wall covering. The painting and wall covering work includes new work, additions, alterations, and maintenance and repairs.

Bridge painting—contractors
Electrostatic painting on site (including lockers and fixtures)—contractors
House painting—contractors
Painting of buildings and other structures, except roofs—contractors
Paper hanging—contractors
Ship painting—contractors
Traffic lane painting—contractors
Wallpaper removal—contractors
Whitewashing—contractors

h. Electrical contractors. Establishments primarily engaged in one or more of the following: (1) performing electrical work at the site; (2) servicing electrical equipment at the site; and (3) the combined activity of selling and installing electrical equipment. The electrical work performed includes new work, additions, alterations, and maintenance and repairs.

Cable splicing, electrical—contractors
Cable television hookup—contractors
Communication equipment installation—contractors
Electric work—contractors
Electrical repair at site of construction—contractors
Electronic control system installation—contractors
Highway lighting and electrical signal construction—contractors
Intercommunication equipment installation—contractors
Sound equipment installation—contractors
Telecommunications equipment installation—contractors
Telephone and telephone equipment installation—contractors

i. Masonry, stone work, tile setting and plastering.

(1) Masonry and stone contractors. Establishments primarily engaged in masonry work, stone setting, and other stone work. The masonry work, stone setting and other stone work performed includes new work, additions, alterations, and maintenance and repairs.

Bricklaying—contractors
Cement block laying—contractors
Chimney construction and maintenance—contractors
Concrete block laying—contractors
Foundations, building of: block, stone or brick—contractors
Marble work, exterior construction—contractors
Masonry—contractors
Refractory brick construction—contractors
Retaining wall construction: block, stone or brick—contractors
Stone setting—contractors
Stone work erection—contractors
Tuck pointing—contractors

(2) Drywall, plastering, acoustical, and insulation contractors. Establishments primarily engaged in drywall, plaster work, acoustical and building insulation work. The drywall, plaster work, acoustical and insulation work performed includes new work, additions, alterations, and maintenance and repairs.

Acoustical work—contractors
Ceilings, acoustical installation—contractors
Drywall construction—contractors
Insulation installation, buildings—contractors
Lathing—contractors
Plastering, plain or ornamental—contractors

Solar reflecting insulation film—contractors
Stucco construction—contractors
Taping and finishing drywall—contractors

(3) Tile, marble, terrazzo, and mosaic contractors. Establishments primarily engaged in (1) setting and installing ceramic tile, marble (interior only), terrazzo, and mosaic, or (2) mixing marble particles and cement to make terrazzo at the job site. The tile, marble, terrazzo, and mosaic work performed includes new work, additions, alterations, and maintenance and repairs.

Fresco work—contractors
Mantel work—contractors
Marble installation, interior; including finishing—contractors
Mosaic work—contractors
Terrazzo work—contractors
Tile installation, ceramic—contractors
Tile setting, ceramic—contractors

j. Carpentering and floor contractors.

(1) Carpentry contractors. Establishments primarily engaged in framing, carpentry, and finishing work. The carpentry work performed includes new work, additions, alterations, and maintenance and repairs.

Carpentry work—contractors
Folding door installation—contractors
Framing—contractors
Garage door installation—contractors
Joinery, ship—contractors
Ship joinery—contractors
Store fixture installation—contractors
Trim and finish—contractors
Window and door (prefabricated) installation—contractors

(2) Floor laying and other floor contractors. Establishments primarily engaged in the installation of resilient floor tile, carpeting, linoleum, and wood or resilient flooring. The floor laying and other floor work performed includes new work, additions, alterations, and maintenance and repairs.

Asphalt tile installation—contractors
Carpet laying or removal service—contractors
Fireproof flooring construction—contractors
Floor laying, scraping, finishing and refinishing—contractors
Flooring, wood—contractors
Hardwood flooring—contractors
Linoleum installation—contractors
Parquet flooring—contractors
Resilient floor laying—contractors
Vinyl floor tile and sheet installation—contractors

k. Roofing, siding, and sheet metal contractors. Establishments primarily engaged in the installation of roofing, siding, sheet metal work, and roof drainage-related work, such as downspouts and gutters. The roofing, siding and sheet metal work performed includes new work, additions, alterations, and maintenance and repairs.

Architectural sheet metal work—contractors
Ceilings, metal; erection and repair—contractors
Coppersmithing, in connection with construction work—contractors
Downspout installation, metal—contractors
Duct work, sheet metal—contractors
Gutter installation, metal—contractors
Roof spraying, painting or coating—contractors
Roofing work, including repairing—contractors

Sheet metal work: except plumbing, heating or air conditioning—contractors
Siding—contractors
Skylight installation—contractors
Tinsmithing, in connection with construction work—contractors

l. Concrete contractors. Establishments primarily engaged in the use of concrete and asphalt to produce parking areas, building foundations, structures, and retaining walls and the use of all materials to produce patios, private driveways and private walks. The concrete work performed includes new work, additions, alterations, and maintenance and repairs.

Asphalting of private driveways and private parking areas—contractors
Blacktop work; private driveways and private parking areas—contractors
Concrete finishers—contractors
Concrete work: private driveways, sidewalks, and parking areas—contractors
Culvert construction—contractors
Curb construction—contractors
Foundations, building of: poured concrete—contractors
Grouting work—contractors
Gunite work—contractors
Parking lot construction—contractors
Patio construction, concrete—contractors
Sidewalk construction, except public—contractors

m. Water well drilling contractors. Establishments primarily engaged in drilling, tapping, and capping of water wells and geothermal drilling. The water well drilling work performed includes new work, additions, alterations, and maintenance and repairs.

Drilling water wells—contractors
Geothermal drilling—contractors
Servicing water wells—contractors
Well drilling, water: except oil or gas field water intake—contractors

n. Other special trade contractors.

(1) Structural steel erection contractors. Establishments primarily engaged in one or more of the following: (1) erecting metal, structural steel and similar products of prestressed or precast concrete to produce structural elements of building exterior, and elevator fronts; (2) setting rods, bars, rebar, mesh and cages to reinforce poured-in-place concrete; and (3) erecting cooling towers and metal storage tanks. The structural steel erection work performed includes new work, additions, alterations, reconstruction, and maintenance and repairs.

Building front installations, metal—contractors
Concrete products, structural precast or prestressed: placing of—contractors
Concrete reinforcement, placing of—contractors
Curtain wall installation—contractors
Elevator front installation, metal—contractors
Iron work, structural—contractors
Metal furring—contractors
Steel work, structural—contractors
Storage tanks, metal; erection—contractors
Storefront installation, metal—contractors

(2) Glass and glazing contractors. Establishments primarily engaged in installing glass or tinting glass. The glass work performed includes new work, additions, alterations, and maintenance and repairs.

Glass installation, except automotive—contractors
Glass work, except automotive—contractors
Glazing work—contractors
Tinting glass—contractors

(3) Excavation contractors. Establishments primarily engaged in preparing land for building construction. The excavation work performed includes new work, additions, alterations, and repairs.

Excavation work—contractors
Foundation digging (excavation)—contractors
Grading: except for highways, streets and airport runways—contractors

(4) Wrecking and demolition contractors. Establishments primarily engaged in wrecking and demolition of buildings and other structures.

Concrete breaking for streets and highways—contractors
Demolition of buildings or other structures, except marine—contractors
Dismantling steel oil tanks, except oil field work—contractors
Underground tank removal—contractors
Wrecking of building or other structures, except marine—contractors

(5) Building equipment and other machinery installation contractors. Establishments primarily engaged in one or more of the following: (1) the installation or dismantling of building equipment, machinery or other industrial equipment; (2) machine rigging; and (3) millwrighting. The building equipment and other machinery installation work performed includes new work, additions, alterations, and maintenance and repairs.

Conveyor system installation—contractors
Dismantling of machinery and other industrial equipment—contractors
Dumbwaiter installation—contractors
Dust collecting equipment installation—contractors
Elevator installation, conversion, and repair—contractors
Incinerator installation, small—contractors
Installation of machinery and other industrial equipment—contractors
Machine rigging—contractors
Millwrights
Pneumatic tube system installation—contractors
Power generating equipment installation—contractors
Revolving door installation—contractors
Vacuum cleaning systems, built-in—contractors

(6) All other special trade contractors. Establishments primarily engaged in specialized construction work. The other specialized work performed includes new work, additions, alterations, and maintenance and repairs.

Antenna installation, except household type—contractors
Artificial turf installation—contractors
Awning installation—contractors
Bathtub refinishing—contractors
Boring for building construction—contractors
Bowling alley installation and service—contractors
Cable splicing service, nonelectrical—contractors
Caulking (construction)—contractors
Cleaning building exteriors—contractors
Cleaning new buildings after construction—contractors
Coating of concrete structures with plastic—contractors
Core drilling for building construction—contractors
Countertop installation—contractors
Dampproofing buildings—contractors
Dewatering—contractors
Diamond drilling for building construction—contractors
Epoxy application—contractors
Erection and dismantling of forms for poured concrete—contractors
Fence construction—contractors
Fire escape installation—contractors
Fireproofing buildings—contractors

Forms for poured concrete, erection and dismantling—contractors
Gas leakage detection—contractors
Gasoline pump installation—contractors
Glazing of concrete surfaces—contractors
Grave excavation—contractors
House moving—contractors
Insulation of pipes and boilers—contractors
Lead burning—contractors
Lightning conductor erection—contractors
Mobile home site setup and tie down—contractors
Ornamental metal work—contractors
Paint and wallpaper stripping—contractors
Plastic wall tile installation—contractors
Posthole digging—contractors
Sandblasting of building exteriors—contractors
Scaffolding construction—contractors
Service and repair of broadcasting stations—contractors
Service station equipment installation, maintenance and repair—contractors
Shoring and underpinning work—contractors
Spectator seating installation—contractors
Steam cleaning of building exteriors—contractors
Steeplejacks
Swimming pool construction—contractors
Television and radio stations, service and repair of—contractors
Test boring for construction—contractors
Tile installation, wall: plastics—contractors
Waterproofing—contractors
Weatherstripping—contractors
Welding contractors, operating at site of construction
Window shade installation—contractors

23.82(3) *The assignment of standard industrial codes.* Each operating establishment is assigned an industry code on the basis of its primary activity, which is determined by its principal product or group of products produced or distributed, or services rendered. Ideally, the principal product or service should be determined by its relative share of value added at the establishment. Since this is not possible for all sectors of the economy, the following should be used as a guide for determining industry codes:

Division	Data Measure
Agriculture, forestry and fishing (except agricultural services)	Value of production
Mining	Value of production
Construction	Value of production
Manufacturing	Value of production
Transportation, communication, electric, gas and sanitary services	Value of receipts or revenues
Wholesale trade	Value of sales
Retail trade	Value of sales
Finance, insurance, and real estate	Value of receipts
Service (including agricultural services)	Value of receipts or revenues
Public administration	Employment or payroll

In some cases it will not be possible to determine even on an estimated basis the value of production or similar appropriate measure for each product or service. In other cases an industrial classification based on measures of output will not accurately reflect the importance of the diversified activities. In these cases,

employment or payroll should be used in lieu of the normal basis for determining the primary activity and subsequent code assignment of the establishment.

This rule is intended to conform to federal changes in the North American Industry Classification System and implements Iowa Code sections 96.7(2), 96.7(3), 96.7(4) and 96.11(1).

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

24.1(1) Reserved.

24.1(2) *Administrative office (state).* The state administrative office of the division of unemployment insurance services of the department of workforce development.

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.

24.1(4) *Applicant.* Any individual applying for work at a workforce development center.

24.1(5) *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(6) *Base period.* See Iowa Code section 96.1A(3).

24.1(7) *Base period employer and chargeable employer.* See Iowa Code section 96.3.

24.1(8) *Benefit eligibility conditions.* Statutory requirements that must be satisfied by an individual with respect to each week of unemployment before benefits can be received.

24.1(9) *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 claim. An application for determination of eligibility filed on an established claim that follows a period of employment.

(2) 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.

(3) 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.

(4) Combined wage claim. A claim filed according to an interstate agreement that 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.

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

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

(7) 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 that certifies to the completion of a week of total unemployment or partial employment to claim benefits for a compensable week.

(8) 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.

(9) Initial interstate claim. A new or an additional interstate claim.

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

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

(12) Mail claim. Reserved.

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

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

(15) 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 that 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.

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

(17) 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 that certifies to the beginning date of a period of unemployment that falls within a benefit year previously established for which a continued claim or claims may be filed and which follows a break in a previously established claim, due to illness, disqualification, unavailability, or failure to report for any reason other than reemployment.

(18) Second benefit year claim. A new claim with an effective date for a second benefit year that 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.

(19) Transitional claim. Reserved.

(20) 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.

24.1(10) *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(11) *Compensable week.* A week for which benefits have been claimed.

24.1(12) *Covered worker.* An individual who has earned wages in insured work.

24.1(13) *Department.* The department of workforce development, the chief executive officer of which is the director, who is appointed by the governor with the approval of two-thirds of the members of the senate. The director is responsible for administering Iowa Code chapter 96.

24.1(14) *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. Initial determination. The first determination with respect to a claim or a request for determination of insured status.

c. Monetary determination. 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. 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.

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

f. Status 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.

24.1(15) *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(16) *Employment security law.* Iowa Code chapter 96.

24.1(17) *Fact-finding interview.* A discussion between interested parties and a department representative for the purpose of obtaining from the claimant a statement regarding a specific eligibility or disqualification issue.

24.1(18) *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(19) *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(20) *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(21) *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.

24.1(22) *Maximum benefit amount.* The maximum total amount of benefits an individual may receive during the individual's benefit year.

24.1(23) *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(24) *Partial benefits.* Benefits payable to an individual for a week of partial unemployment.

24.1(25) *Partial earnings allowance.* The amount of earnings that are disregarded in calculating a claimant's benefit for a week.

24.1(26) *Part-time worker.* See Iowa Code section 96.3.

24.1(27) *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(28) *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(29) *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(30) *Registration.* The process of applying for work through an office of the department of workforce development.

24.1(31) *Request for determination of insured status.* A request by an individual for a determination of insured status.

24.1(32) *Separations.* All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoff. 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. Quit. 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 separation. 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(33) *Social security number.* The identification number assigned to an individual by the Social Security Administration under the Social Security Act.

24.1(34) *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(35) *Total unemployment.* See week of unemployment.

24.1(36) *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(37) *Wage credits.* Wages earned in insured work.

24.1(38) *Week of unemployment.* A week during which an individual performs no work and earns no wages, except as indicated and has earnings that do not exceed the earnings limit.

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, 96.1A and 96.23.

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

24.2(1) Filing a benefit claim.

a. In order to establish a benefit year during which an individual may receive unemployment benefits, the individual, once separated from employment, must file an initial claim, verify their identity, and register for work. The claim may be filed electronically or by other means prescribed by the department. A claim filed in accordance with this rule is considered 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 the individual's last employing unit or employer.

(2) Work history for all employers within the individual's base period.

(3) The location of the last job.

(4) The last day of work.

(5) The reason for separation from work.

(6) Certification that the individual is unemployed.

(7) Certification that the individual registers for work.

(8) The individual's last occupation.

(9) Number, full name, social security number, date of birth, and relationship of any dependents claimed.

1. *"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 is the gross wages earned by the spouse in the calendar week immediately preceding the claim's effective date.

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

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

(11) Such other information as requested by the department.

c. All claimants on an initial claim must state that they are registered for work and list their principal occupation. A group code will be assigned to the claimant to control the type of registration that is made. Code assignments are 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 those "temporarily unemployed" as defined in Iowa Code section 96.1A(37)*"c."* 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 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 does 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, and weekly contact to check for available work is required. Loss of membership will 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 re-employment activities, as established by the department.

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

(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. In order to maintain continuing eligibility for benefits during any continuous period of unemployment, an individual must report as directed by 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 or to an account specified by the claimant.

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

e. After the initial claim has been filed, the claimant will receive a notice of monetary eligibility. If the 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.

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

(1) The claim must be submitted between 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 using the weekly continued claim system is to personally file the claim on the system unless the individual is disabled and has received prior approval from the department.

(3) The claim must include 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, and was able and available for work;

3. That the individual has performed a minimum of four work search activities and documented and reported each activity to the department.

- At least three of the four work search activities for the purpose of this paragraph shall consist of one of the following:
  - Applying for a potential job opening by submitting a resume or application through any of the following means:
    - Online.
    - In person.
    - Electronic mail.
    - Facsimile.
    - Mail.
  - Completing a civil service examination.
- Additional work search activities for the purpose of this paragraph consist of any of the following:
  - Registering with a placement facility of a school or college.
  - Interviewing for a job virtually, in person, or at a job fair.
  - Attending an employment workshop organized or approved by the department, which may include completing an online or in-person job search workshop, job club, or job search networking meeting.
  - Attending a job fair sponsored or approved by the department.
  - Attending a scheduled career networking meeting with the department.
  - With the assistance and guidance of the department, completing a reemployment plan, which may include completing career direction research or work such as a job search plan or a targeted employer list.
  - Participating in job search counseling with a department career planner.
  - Attending an appointment with a core program partner authorized by the federal Workforce Innovation and Opportunity Act, Public Law 113-128.
  - Participating in online or in-person mock interviews organized or approved by the department.
  - Completing career-related assessment approved by the department and reviewed with a department career planner.

4. That the individual understands there are 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 claim records to ensure there is no delay in filing the 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.

g. Effective starting date for the benefit year.

(1) Filing for benefits is 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 that 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 is not 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.

h. An individual is entitled to partial benefits for partial unemployment as per Iowa code section 96.1A(37)*"b."* 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.

i. Any individual who is disqualified for benefits because of the individual's failure to report 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 will 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, will 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 established by statute, the claims taker will 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 will be accepted without hesitance. The claimant may be required to provide adequate proof of identification such as a driver's license, proof of citizenship, car registration, union membership card or supply personally identifying information.

c. If a claim filed in a previous quarter was ineligible 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 filed an ineligible claim in the same quarter unless the claimant insists on filing after being advised of ineligibility. The claims taker will notify the claimant that another claim filed in the same quarter would also be 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 will be taken.

e. Partially unemployed claims.

(1) A partially unemployed individual will:

1. File a claim for benefits in the same manner as an initial claim for unemployment insurance.
2. Report all wages that are earned for each week benefits are claimed.

(2) 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 will be taken.

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

a. All interstate claimants must file an Iowa claim.

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 interstate claimant must complete and file an Initial Interstate Claim unless otherwise directed by the interstate handbook for interstate claims-taking provided by the Employment and Training Administration of the United States Department of Labor.

24.2(4) Cancellation of unemployment insurance claim.

a. An individual may direct a request for cancellation of an unemployment insurance claim 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 that is the result of employer coercion or intimidation will be denied and the employer may be subjected to serious misdemeanor charges.

c. If a cancellation request is received within the ten-day protest period and before payment is made, the benefits bureau may upon review 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 that 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 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) If the Iowa wages are erroneous and 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 may not be reestablished with the same effective date.

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

g. All unemployment insurance claims canceled will 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, 96.1A and 96.20.

[**ARC 8789C**, IAB 1/8/25, effective 2/12/25]

871—24.3(96) Social security number needed for filing. A claim will not become valid until the identity of the claimant has been verified by the department.

24.3(1) If the agency is unable to verify the claimant's identity in the claim application, the department will notify the claimant, who must provide approved documents, one of which must contain a social security number. The department will determine the approved documents required to verify identity. The list of approved documents can be found at the nearest local workforce center or online.

24.3(2) The claimant's identity will not be considered verified until approved documents have been provided. The claim will remain locked, and the claimant will remain ineligible for benefits, until the claimant provides approved documents.

24.3(3) Approved documents must be provided or postmarked by the due date provided on the notification. Once the approved documents are verified, the claim will be unlocked for all weeks following the most recent effective date of the claim application.

24.3(4) If a claimant provides approved documents after the due date, the claimant will be eligible, provided there are no other outstanding issues with the claim, as of the Sunday of the week the claimant's identity was verified.

This rule is intended to implement Iowa Code section 96.6.

[**ARC 8789C**, IAB 1/8/25, effective 2/12/25]

871—24.4(96) Benefit rights information.

24.4(1) *Intrastate benefits.* Benefit rights information is available online to explain those provisions in the law and rules that govern the individual's monetary eligibility, rights 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 that will provide additional information explaining the individual's rights, benefits, and responsibilities under the liable state's unemployment insurance program.

This rule is intended to implement Iowa Code section 96.4.

[**ARC 8789C**, IAB 1/8/25, effective 2/12/25]

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

24.5(1) 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. 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 outside 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 representing the workers.

(3) Public facility (e.g., courthouse, city hall).

24.5(2) 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 will coordinate 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. If the layoff is for vacation or inventory purposes, the employer shall follow the vacation pay procedure in rule 871—24.12(96).

This rule is intended to implement Iowa Code section 96.6(1).

[**ARC 8789C**, IAB 1/8/25, effective 2/12/25]

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

24.6(1) The department will provide a program that consists of providing reemployment services.

24.6(2) Purpose. 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 skillset, 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 is 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 class size limitations.

24.6(6) A claimant must participate in reemployment services when referred by the department unless the claimant has previously completed such training or services or demonstrates to the department of other good cause prior to the appointment or service.

a. Failure to participate without good cause will disqualify the claimant from receiving benefits until the claimant participates in the reemployment services or eligibility assessment.

b. Good cause for failure to participate is an important and significant reason that a reasonable person would consider adequate justification in view of the paramount importance of reemployment to the claimant.

24.6(7) Eligibility assessment procedure.

a. Before an individual has claimed five weeks of intrastate benefits, the workforce development center will 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.

d. A Notice to Report will 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 will issue an appropriate failure to report decision and lock the claim to prevent payment.

e. Selected claimants must participate in staff-assisted services for the initial assessment.

24.6(8) Conducting the first eligibility assessment interview.

a. All available evidence will be examined to detect potentially disqualifying issues.

b. The individual's need for advice, assistance or instructions will be determined and conveyed to the individual.

c. The interview will 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 that otherwise would result in referral for adjudication.

e. The individual will 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 is 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 8789C**, IAB 1/8/25, effective 2/12/25]

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 who has insufficient wage credits in the base period may qualify for unemployment insurance benefits as explained in Iowa Code section 96.23.

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 as explained in Iowa Code section 96.23 using the following criteria for allowances and disqualifications.

a. Allowances. When the allowance criteria are met, the department will 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 will 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(4) The individual will be asked to complete the Affidavit and Questionnaire, 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(5) The department will provide the individual with the monetary redetermination. 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 will be notified and will be responsible for the charges on the redetermined claim that 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 maintains the right to protest as provided in rule 871—17.8(96).

This rule is intended to implement Iowa Code section 96.23.

[**ARC 8789C**, IAB 1/8/25, effective 2/12/25]

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

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

a. Notice of Claim and 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 will be sent to an owner, a partner, an executive officer, a 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) Employing units' response to a notice of the filing of an initial claim or a request for wage and separation information and protesting benefit payment.

a. The employing unit that receives a Notice of Claim or 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 disclosing 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. If the tenth day falls on a Saturday, Sunday or holiday, the protest period is extended to the department's next working day. If the employing unit has filed a timely report of facts that might adversely affect the individual's benefit rights, the report will 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 will be deemed to have not been properly notified and the employing unit will 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 that, 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 must be postmarked or received before or within ten days of the date that the Notice of Claim was mailed to the employer. If 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) On the Notice of Separation, the employer must indicate the dates of the last day worked, the separation date and the reason the worker was separated.

24.8(3) Completing and signing of forms by an employing unit that 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, is accomplished by properly completing the form or computerized format provided by the department.

b. The form must be signed by, or the computerized form completed by, an authorized agent, individual proprietor, partner, executive officer, 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.

c. Failure to timely submit any notice or response requested by the department will result in the department basing its determination of the individual's rights to benefits on the information available.

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

a. An employing unit that has filed a timely response or protest to the notice of the filing of an initial claim will be notified in writing of the determination as to the individual's rights to benefits. If an individual's employing unit has submitted timely information affecting the individual's rights to benefits, including facts disclosing 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 will 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 must contain a statement establishing the employing unit's right of appeal.

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

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

(2) 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 will comply, and the department has approved authorization (power of attorney) designating the agent to represent the employing unit.

This rule is intended to implement Iowa Code section 96.6.

[**ARC 8789C**, IAB 1/8/25, effective 2/12/25]

871—24.9(96) Determination of benefit rights.

24.9(1) *Monetary determinations.* When an initial claim for benefits is filed, the department will 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.

24.9(2) *Fact-finding.* Each interested party will be afforded the opportunity to provide information to the department regarding pending eligibility matters. A telephone fact-finding interview may be scheduled upon request of either interested party. Interested parties 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 reserves the right to call any interested party in for an in-person fact-finding interview.

24.9(3) *Notice of benefit determination.*

a. This notice of benefit determination will 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 potentially disqualifying issues relevant to the determination. If a claimant is ineligible, this notice will advise of the reason.

b. The department will promptly notify the claimant or any other party filing the request of its decision via a notice of benefit determination that specifies the claimant's appeal rights. Unless the claimant or any such other party entitled to notice, within ten days after such notification was sent 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, and benefits will be paid or denied in accordance therewith.

24.9(4) *Reconsideration of determination.*

a. The department, upon receiving a timely written request for reconsideration or, on its own initiative and based on newly discovered facts it may have in its possession or may acquire, and that may affect the validity of the original determination, may affirm, modify, or reverse the prior decision, or refer the claim to an administrative law judge. In such case, an unemployment insurance representative will examine the facts or request and promptly issue a redetermination. The redetermination of the monetary record will constitute a final decision unless the individual files a written appeal to an administrative law judge within ten days of the date on the redetermination specifying the grounds of objection.

b. For the purposes of this subrule, the appeal period is extended to the next working day of the department if the tenth day falls on a Saturday, Sunday, or holiday.

24.9(5) *Nonmonetary determinations.*

a. When a protest of an initial claim for benefits is filed, the department will mail to the individual claiming benefits, and the most recent or any other base period employing unit, an 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 will be afforded the opportunity to present facts and evidence that 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 will be informed of the recording of the interview, which must not be disruptive or distracting.

c. Interested parties are afforded review, reconsideration, and appeal rights in the same manner as those provided for monetary determinations as established in subrule 24.9(4).

This rule is intended to implement Iowa Code section 96.6.
[**ARC 8789C**, IAB 1/8/25, effective 2/12/25]

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(2), means submitting detailed factual information of the quantity and quality that if unrebutted 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 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 24.24(7). 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(2), as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter 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 will 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(2) has engaged in a continuous pattern of nonparticipation, the division administrator will suspend the 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 any 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(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."*
[**ARC 8789C**, IAB 1/8/25, effective 2/12/25]

871—24.11(96) Deductible and nondeductible payments.

24.11(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 will be deducted from benefits in accordance with the following procedures until the amount is exhausted; however, vacation pay that is deductible in the manner prescribed in rule 871—24.12(96) will 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 that may indicate payments made under this rule. The employer is required to designate on the Notice of Claim response 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, the unemployment insurance representative will determine the days 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) will 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—24.14(96). If the claimant received vacation pay under rule 871—24.12(96), the procedure established in Iowa Code section 96.5(7)*"c"* will govern. The maximum number of days the vacation pay will be applied is five workdays following the separation date. The first day the vacation pay can be applied is the first workday after the separation. The amount of any payment under subrule 24.13(3) will be fully deducted from the individual's weekly benefit amount on a dollar-for-dollar basis.

24.11(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 provided in rule 871—24.14(96):

a. Holiday pay. However, if the employer does not pay holiday pay, the individual may request an underpayment adjustment from the department.

b. Commissions. 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. Incentive pay 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. 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, e.g. 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 that is deductible from benefits when earned by the individual during the period in which the individual is claiming benefits.

g. Tips or gratuity. Tips or gratuity are only deductible when based on service performed by the individual during the period in which the individual is claiming benefits.

24.11(3) *Fully deductible payments from benefits.* The following payments are considered as wages, but 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 is treated as vacation and fully deductible in the manner prescribed in rule 871—24.12(96).

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

d. Workers' compensation, temporary disability only. The payment is 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 if the base period employer has made 100 percent of the contributions to the plan that is the same percentage as the percentage contribution of the base period or chargeable employer to the plan.

24.11(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 services.

f. Supplemental unemployment benefit plans approved by the department. See 871—paragraph 16.3(1)*"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 will 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 96.1A.

[**ARC 8789C**, IAB 1/8/25, effective 2/12/25]

871—24.12(96) Vacation pay.

24.12(1) If the employer properly notifies the department 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, not to exceed five workdays. For the purposes of this rule, rule 871—24.13(96), and rule 871—24.12(96), the term "vacation pay" includes paid time off and annual leave payments.

24.12(2) If the employer fails to properly notify the department regarding the application of vacation pay to a specific vacation period, the vacation pay will 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.

24.12(3) Unless otherwise specified by the employer, the amount of the vacation pay will 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 8789C**, IAB 1/8/25, effective 2/12/25]

871—24.13(96) Vacation pay procedure.

24.13(1) The Notice of Claim, Request for Federal Wage and Separation Information, and 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, will be used as notification to the department that vacation pay is applicable. Upon receipt of these forms, the department will:

a. Compare the amount of vacation reported by the employer with the computer record. If there are any discrepancies that would affect the claimant's eligibility for unemployment insurance benefits for any week claimed, the claimant will be afforded the opportunity to present facts and evidence. The department may then allow the employer to present additional facts and evidence. If the employer is afforded an opportunity to provide additional facts and evidence, the unemployment insurance representative will likewise afford the claimant the opportunity to present additional facts and evidence.

b. Consider all information submitted by the interested parties and issue to the employer and claimant the appropriate decision concerning the vacation pay. The department will then check the current status of the claim to ascertain if any weeks have been reported.

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

24.13(2) The claimant is instructed to only report vacation pay applicable to the five workdays following the last date worked and that vacation pay designated by the employer in excess of the vacation pay the claimant reported may result in an overpayment of benefits.

This rule is intended to implement Iowa Code section 96.5(7).

[**ARC 8789C**, IAB 1/8/25, effective 2/12/25]

871—24.14(96) Wage-earnings limitation. Partial unemployment is defined in Iowa Code section 96.1A(37)*"b."* If an individual is partially unemployed, the formula for wage deduction is 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 lower multiple of one 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 96.1A.

[**ARC 8789C**, IAB 1/8/25, effective 2/12/25]

871—24.15(96) Benefit eligibility conditions. To be eligible to receive benefits, the individual bears the burden of establishing, and the department must find, that the individual is able to work, available for work, and earnestly and actively seeking work.

24.15(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.

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.

24.15(2) *Available for work.* The availability requirement is satisfied when an individual is genuinely attached to the labor market (e.g. the individual is willing, able, and ready to accept suitable work that the individual does not have good cause to refuse). Under unemployment insurance laws, it is the availability of an individual who is tested, and the labor market is therefore described in terms of the individual. A labor market for an individual means a market for the type of service the individual offers in the geographical area in which the individual offers the service. It does not mean that job vacancies must exist. It means only that the type of services that 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. Intermittent employment. An individual cannot limit employability to only temporary or intermittent work until recalled by a regular employer.

c. 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 rather 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.

d. 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 incarcerated individual who can meet the requirements of Iowa Code section 96.4(3).

e. Available for part of week. Each case is 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.

f. On-call workers.

(1) Substitute workers (e.g., 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 is 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. 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 from on-call work, such as a banquet worker, railway worker, or substitute school teacher, is not considered an unemployed individual within the meaning of Iowa Code section 96.1A(37)*"a"* and *"b."* An individual who is willing to accept only on-call work is not considered to be available for work.

g. Leave of absence. A leave of absence negotiated with the consent of both employer and employee is deemed a period of voluntary unemployment for the employee who 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, the individual is considered laid off and eligible for benefits.

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

h. 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.

i. 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. 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.

j. Reasonable expectation of securing employment. An individual may not be eligible for benefits if the individual has imposed limitations that 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.

k. Corporate officers. To be considered available, the corporate officer must meet the same tests of availability as are met by other individuals.

l. Lawfully authorized work. An individual who is not lawfully authorized to work within the United States is considered unavailable for work.

24.15(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 that 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 will 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 department makes determinations on a case-by-case basis. Subject to the foregoing, applicable actions of the following kind are considered an earnest and active search for work if the department finds each constitutes a reasonable means of securing work by the individual:

(1) Applying with employers reasonably expected to have suitable openings.

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

(3) Applying or testing 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 that appear suitable to the individual if the response is made in writing, in person, or electronically.

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

(6) No individual 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 that 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. "Earnestly and actively" may be interpreted in different manners, depending on the estimate of employment opportunities in an area. The number of employer contacts appropriate in an area of limited opportunities might be totally unacceptable in another area. The number of required contacts 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. Reemployment activities must be recorded as directed by the department.

c. Exceptions.

(1) 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 when 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. Mere registration at a union or reporting to a 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 individuals complete reemployment activities.

(2) The requirement for seeking work is waived if all of the following conditions apply:

1. The individual is attached to a regular job or industry.

2. The individual is a high-skilled worker. For purposes of this numbered paragraph, "high-skilled worker" means a worker whose job or position requires licensing, credentials, or specialized training.

3. The individual is on a short-term temporary layoff. For purposes of this numbered paragraph, "short-term temporary layoff" means a layoff period of 16 weeks or less due to seasonal weather conditions

that impacts the ability to perform work related to highway construction, repair, or maintenance with a specific return-to-work date verified by the employer.

4. The individual otherwise qualifies for unemployment insurance benefits.

d. Week-to-week disqualification. Disqualification due to failure to conduct reemployment activities is made on a week-to-week basis and is not permanent.

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 individuals receiving extended benefits or similar federal program benefits.

f. Search for work.

(1) The group code is used to determine which individuals are required to make personal applications for work. Other factors, 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.

(2) 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 that 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. Job search assistance. Attendance at job search assistance classes, including reemployment services, that are sponsored by the department may be counted as one of the individual's reemployment activities for that week.

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

[**ARC 8789C**, IAB 1/8/25, effective 2/12/25]

871—24.16(96) Availability disqualifications. The following are reasons for disqualifying a claimant for being unavailable for work:

24.16(1) An individual who is ill and presently not able to work due to illness.

24.16(2) An individual presently in the hospital. If there is a change in status, the individual is to renew the claim at once if unemployed.

24.16(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.

24.16(4) If the individual loses the means of transportation from the residence to the area of usual employment. However, an individual will not be disqualified for restricting employability to the geographic area of usual employment. More information is contained in subrule 24.20(7).

24.16(5) Full-time students devoting the major portion of their time and efforts to their studies except for students available to the same degree and to the same extent as when they accrued wage credits.

24.16(6) If an individual has a medical report on file submitted by a physician or a physician assistant, stating the individual is not presently able to work.

24.16(7) Where an individual devotes time and effort to becoming self-employed.

24.16(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care.

24.16(9) The claimant requested and was granted a leave of absence.

24.16(10) Failure to report as directed to the department in response to a notice sent to the claimant.

24.16(11) If a claimant is in jail or prison.

24.16(12) If an individual cannot be contacted by the department for referral to possible employment.

24.16(13) Where a claimant has demanded a wage in excess of the wages most commonly paid for suitable work the individual is seeking in the locality.

24.16(14) 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.

24.16(15) Where work is unduly limited because the claimant is not willing to work the number of hours necessary in the claimant's occupation.

24.16(16) Where 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.

24.16(17) Where availability for work is unduly limited because the claimant is not willing to accept work in the 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.

24.16(18) Where availability for work is unduly limited because the claimant is waiting to be recalled by a former employer or waiting to go to work for a specific employer and will not consider suitable work with other employers.

24.16(19) Where a claimant does not want to earn wages that may adversely affect receipt of social security.

24.16(20) Where availability is unduly limited because claimant is working to such a degree that removes the claimant from the labor market.

24.16(21) Reserved.

24.16(22) If the claimant is out of town for personal reasons for the major portion of the workweek and is not fulfilling reemployment requirements.

24.16(23) 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.

24.16(24) Failure to report any effort to find employment.

24.16(25) Failure to make an adequate work search after having been previously warned and instructed to expand the work search.

24.16(26) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

24.16(27) Failure to attend the major portion of the scheduled workweek for department-approved training.

24.16(28) Where the claimant spent the major portion of the period traveling while relocating.

24.16(29) 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 96.1A(37)*"c"* are met.

24.16(30) Where the claimant left employment prior to a scheduled layoff when claimant could have remained in employment. 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.

24.16(31) Where the claimant is not able to work due to personal injury.

24.16(32) Where the claimant is not able to work, is under the care of a medical practitioner, and has not been released as being able to work.

24.16(33) An individual who follows a course of action designed to discourage prospective employers from hiring the individual will be deemed to have failed to make an effort to secure work.

24.16(34) Where the work search has been deliberately falsified for the purpose of obtaining benefits, the recommended penalty is:

a. First offense—denial of benefits for six weeks.

b. Second offense—denial of benefits for nine weeks.

c. Third offense—total disqualification for the remainder of the benefit year and the department may consider filing fraud charges.

The penalties are a mere guide and not a substitute for the subjective judgment of the department.

24.16(35) Where claimant became temporarily unemployed but was unavailable 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 and Iowa Code sections 96.4(3), 96.5(1), 96.6(1), 96.1A and 96.29.

[**ARC 8789C**, IAB 1/8/25, effective 2/12/25]

871—24.17(96) Failure to accept work and failure to apply for suitable work. A claimant's failure to accept work and failure to apply for suitable work will be removed when 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.

24.17(1) *Bona fide offer of work.*

a. In deciding whether or not a claimant failed to accept or 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 is deemed to be sufficient as a personal contact.

b. Upon notification of a job opening for a claimant, a representative of the department will notify the claimant of the job referral. If the claimant fails to respond without good cause, the claimant will be disqualified until such time as the claimant contacts the department.

24.17(2) *Job within claimant's capabilities.*

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

b. A refusal of suitable work occurs when a 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. The claimant will be disqualified for failure to apply for or accept an offer to work until such time as 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.

24.17(3) *Each case decided on its own merits.* The department will investigate and determine whether the work was suitable and whether the claimant had good cause for refusal. Each case will be determined on its own merits as established by the facts. Good cause for refusing suitable work may nevertheless disqualify a claimant as being unavailable for work.

24.17(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 will 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.

24.17(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.

24.17(6) *Claimant physically unable to perform job.* A medical practitioner must submit certification to support the claimant's statement that work offered is unsuitable because of the claimant's physical condition.

24.17(7) *Gainfully employed outside of area where job is offered.* Two reasons that generally constitute good cause for not accepting an offer of work are if the claimant is gainfully employed elsewhere or the claimant does not reside in the area where the job is offered.

24.17(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 section 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.

24.17(9) *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 may not be reason for a refusal disqualification.

24.17(10) *Bulletin board notice of work.* A bulletin board notice for employees to work during a plant shutdown does not constitute an offer of work by the company.

24.17(11) *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 will be deemed to have refused suitable work.

24.17(12) *Claimant moved to another state.* A claimant who moves to another state will not be subject to disqualification for refusal to return to a previously held job.

24.17(13) *Employment offer from former employer.*

a. A claimant will be disqualified for refusing work with a former employer if the work offered is reasonably suitable, comparable, and within the purview of the claimant's usual occupation. The provisions of Iowa Code section 96.5(3)*"b"* control the determination of suitability of work.

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

24.17(14) *Suitable work.* In determining what constitutes suitable work, the department will 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 that is determined by the number of weeks that 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 employment is contingent on joining or resigning from a labor organization.

24.17(15) *Disabled accessibility to job.* A job offer is not 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, 96.1A, and 96.29.

[**ARC 8789C**, IAB 1/8/25, effective 2/12/25]

871—24.18(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 with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits, but the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code sections 96.5(1)*"a"* through *"i"* and 96.5(10). The following reasons for a voluntary quit are be presumed to be without good cause attributable to the employer:

24.18(1) Claimant's lack of transportation to the work site unless the employer had agreed to furnish transportation.

24.18(2) Claimant moved to a different locality.

24.18(3) Claimant left to seek other employment but did not secure employment.

24.18(4) Claimant was absent for three days without giving notice to employer in violation of company rule.

24.18(5) Claimant left due to an inability to work with other employees.

24.18(6) Claimant failed to return to work upon the termination of a labor dispute.

24.18(7) Claimant left to enter military service, either voluntarily or by conscription. While in military service such claimant is considered to be on leave from employment. Voluntary quit in this context will occur when upon release from military service the claimant does not return to the claimant's employer to apply for employment within 90 days, provided the claimant provides evidence to the employer of satisfactory completion of the military service and further provided that the claimant is still qualified to perform the duties of the position.

24.18(8) Claimant left employment to accompany a spouse to a new locality. No disqualification will be imposed when Iowa Code section 96.5(1)*"b"* is applicable.

24.18(9) Claimant left to get married.

24.18(10) Claimant left without notice during a mutually agreed upon trial period of employment.

24.18(11) Claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

24.18(12) Claimant becomes incarcerated.

24.18(13) Claimant left because of lack of child care.

24.18(14) Claimant left because of a dislike of the shift worked.

24.18(15) Claimant left to enter self-employment.

24.18(16) Claimant left for compelling personal reasons and the period of absence exceeded ten working days.

24.18(17) Claimant left because of dissatisfaction with the work environment.

24.18(18) Claimant left because of a personality conflict with the supervisor.

24.18(19) Claimant left voluntarily due to family responsibilities or serious family needs.

24.18(20) Claimant left employment to accept retirement when such claimant could have continued working.

24.18(21) Claimant left to take a vacation.

24.18(22) Claimant left to go to school.

24.18(23) Claimant left rather than perform the assigned work as instructed.

24.18(24) Claimant left after being reprimanded.

24.18(25) Claimant left in anticipation of a layoff in the near future, but work was still available at the time claimant left.

24.18(26) Claimant left due to the commuting distance to the job and was aware of the distance when hired.

24.18(27) Claimant left work to keep from earning enough wages during the year to adversely affect receipt of social security.

24.18(28) 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.

24.18(29) Claimant left because claimant felt that the job performance was not to the satisfaction of the employer provided the employer had not requested claimant leave and continued work was available.

24.18(30) Claimant left because work was irregular due to weather conditions that were not unusual in claimant's type of employment.

24.18(31) Claimant left because of illness or injury that was not caused or aggravated by the employment or pregnancy and failed to:

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

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

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

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

24.18(32) Where claimant maintained that the claimant left due to an illness or injury that was caused or aggravated by the employment but 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.

24.18(33) Where claimant gives the employer notice of an intention to resign and the employer accepted such resignation. This rule also applies to a 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.

24.18(34) Where claimant gave the employer an advance notice of resignation, causing 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. Benefits will be denied effective the proposed date of resignation.

24.18(35) Where 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.

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, and 96.1A.

[**ARC 8789C**, IAB 1/8/25, effective 2/12/25]

871—24.19(96) Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. In addition to the reasons established in Iowa Code section 96.5(1), the following are reasons for a claimant leaving employment with good cause attributable to the employer:

24.19(1) An employer's willful breach of contract of hire is not 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 may involve changes in working hours, shifts, remuneration, location of employment, or drastic modification in type of work. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

24.19(2) Claimant left due to unsafe working conditions.

24.19(3) Claimant left due to unlawful working conditions.

24.19(4) Claimant left due to intolerable or detrimental working conditions.

24.19(5) Claimant was laid off by the employer for being pregnant; however, availability must still be determined.

24.19(6) Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. For purposes of Iowa Code section 96.5(1)*"d,"* recovery is defined as the ability of the claimant to perform all 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 that caused or aggravated the illness, injury, allergy, or disease to the employee that 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, 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 informed 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 that is not injurious to the claimant's health and for which the claimant must remain available.

24.19(7) For purposes of Iowa Code section 96.5(1)*"c,"* 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 are related by blood or by marriage.

24.19(8) For purposes of Iowa Code section 96.5(1)*"e,"* 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.

24.19(9) 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.

24.19(10) 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).

24.19(11) 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 is eligible for benefits for the period between the actual separation and the future quit date given by the claimant.

24.19(12) A claimant who, when told of a scheduled future layoff, leaves employment before the layoff date is deemed to be unavailable for work until the future separation date designated by the employer. After the employer-designated date, the separation will be considered a layoff.

24.19(13) For purposes of Iowa Code section 96.5(1)*"g,"* 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 snowstorm, telephone lines down, employer closed for vacation, hospitalization of the claimant, and other substantial reasons.

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.

24.19(14) For purposes of Iowa Code section 96.5(1)*"f,"* working days means the normal days in which the employer is open for business.

24.19(15) Separation due to incarceration.

a. The claimant is 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 working 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 24.19(17)*"a"*(1), the claimant is considered to have voluntarily quit the employment if the claimant was absent for three working days or more under subrule 24.18(4). If the absence was two days or less, the separation is considered a discharge under rule 871—24.24(96). If all of the conditions of subparagraphs 24.19(17)*"a"*(2), 24.19(17)*"a"*(3) and 24.19(17)*"a"*(4) are not satisfied, the separation is considered a discharge under rule 871—24.24(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.

24.19(16) 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 is not construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable will 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—24.17(96) are controlling in the determination of suitability of work. However, this subrule does not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) that 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 is considered to have voluntarily quit employment.

24.19(17) The claimant left work voluntarily rather than accept a transfer to another locality that would have caused a considerable personal hardship.

24.19(18) When a claimant was compelled to resign when given the choice of resigning or being discharged, it is not considered a voluntary leaving.

24.19(19) 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. This subrule does not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) that 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 are considered to have voluntarily quit employment.

24.19(20) The claimant left work because the type of work was misrepresented at the time of acceptance of the work assignment.

24.19(21) 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 is entitled to a leave of absence during the period of such duty. The employer will restore the person to the position held prior to such leave of absence, or employ the person in a similar position provided that the person provides evidence to the employer of satisfactory completion of the training or duty and further provided that the person remains qualified to perform the duties of the position.

24.19(22) 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 will immediately become chargeable for the benefits paid that are based on the wages paid by the transferring employer, provided the acquiring employer does not receive a partial successorship, and no disqualification will 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 96.1A.

[**ARC 8789C**, IAB 1/8/25, effective 2/12/25]

871—24.20(96) Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and who has not requalified for benefits following the voluntary quit of part-time employment, but is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, will not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer that was voluntarily quit will be notified that benefit payments will not be made that are based on the wages paid by the part-time employer, and benefit charges will 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 will 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 will be transferred to the balancing account.

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

[**ARC 8789C**, IAB 1/8/25, effective 2/12/25]

871—24.21(96) Voluntary quit requalifications and previously adjudicated voluntary quit issues.

24.21(1) A claimant is eligible for benefits even though having voluntarily left employment, if after leaving the 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.

24.21(2) The claimant is eligible for benefits even though having been previously disqualified from benefits due to voluntary quit, if, after 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.

24.21(3) The claimant will 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 insured work and does not include self-employment.

24.21(4) 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.

24.21(5) 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.

24.21(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 the employment appeal board and such decision has become final.

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

[**ARC 8789C**, IAB 1/8/25, effective 2/12/25]

871—24.22(96) Business closing.

24.22(1) Whenever an employer at which the individual was last employed and is laid off goes out of business, 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 26 times the weekly benefit amount or one-half of the total base period wages, whichever is less. This rule also applies retroactively for monetary redetermination purposes during the current benefit year of the individual who is temporarily laid off with the expectation of returning to work once the temporary or seasonal factors have been eliminated and is prevented from returning to work because the employer goes out of business within the same benefit year. 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.

24.22(2) Going out of business is when an employer closes its door and ceases to function as a business. An employer is not considered to have gone out of business if it sells or otherwise transfers the business to another employer that continues to operate the business.

24.22(3) When the unemployment insurance representative is informed by the individual or has knowledge of an employer going out of business, the representative completes a verification of business closing form and refers it to the field audit section for verification. Upon return of the form from the field audit section, a representative will issue the appropriate decisions to all claimants who requested that their unemployment insurance claim be redetermined as a business closing.

This rule is intended to implement Iowa Code section 96.3(5).

[**ARC 8789C**, IAB 1/8/25, effective 2/12/25]

871—24.23(96) Subsequent benefit year condition.

24.23(1) The claimant must have been paid benefits on a previous claim.

24.23(2) Qualifications for a second benefit year are established in Iowa Code section 96.4(4)*"c."* Vacation pay, severance pay and bonuses are not considered as wages for second benefit year requalification purposes.

24.23(3) Employment for a railroad under the Railroad Unemployment Insurance Act is insured work.

24.23(4) Disqualification for lack of eight times the claimant's weekly benefit amount from the claimant's previous benefit year in insured work will be removed upon verification that the claimant worked in and received wages for insured work totaling eight times the claimant's weekly benefit amount from the previous benefit year during or after the previous benefit year.

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

[**ARC 8789C**, IAB 1/8/25, effective 2/12/25]

871—24.24(96) Discharge for misconduct.

24.24(1) *Definition.*

a. "Misconduct" is defined in Iowa Code section 96.5(2)*"d."*

b. Back pay awards are not considered when calculating wages for qualification under Iowa Code section 96.5(2)*"a."*

24.24(2) *Gross misconduct.*

a. "Gross misconduct" is defined in Iowa Code section 96.5(2)*"c."*

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 will 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.

24.24(3) *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 are not 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 is resolved.

24.24(4) *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 are not issues of misconduct.

24.24(5) *False work application.* It is an act of misconduct when a willfully and deliberately false statement, made on a work application, may or does result in endangering the health, safety or morals of the applicant or others, result in exposing the employer to legal liabilities or penalties, or result in placing the employer in jeopardy.

24.24(6) *Excessive unexcused absenteeism.* Excessive unexcused absenteeism is an intentional disregard of the claimant's duty to the employer and is considered misconduct except for illness or other reasonable grounds so long as properly reported to the employer.

24.24(7) *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.

24.24(8) *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. Cosper vs. Iowa Department of Job Service and Blue Cross of Iowa*.

[**ARC 8789C**, IAB 1/8/25, effective 2/12/25]

871—24.25(96) Labor disputes.

24.25(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 is disqualified for benefits if unemployment is due to a labor dispute.

24.25(2) *Initial requirements—workforce development center.*

a. As soon as a workforce development center has knowledge of a labor dispute or work stoppage in its administrative area, a Labor Dispute Report will be sent to the administrative office of the department advising of the labor dispute or work stoppage.

b. If the labor dispute or work stoppage is terminated before the report is transmitted, the information concerning the termination of the dispute and the date of the worker's return to work must also be entered on the Labor Dispute Report.

c. When the labor dispute or work stoppage is terminated after the filing of the initial Form 68-0535, the department must be notified of the termination and return to work dates.

d. In those instances where an association represents a group of employers, the report will contain the names and addresses of the employers who are involved in the labor dispute, as well as 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 process an initial application for unemployment, Application for Job Placement Assistance and/or Job Insurance, in the normal manner, which will include the union name and local union number.

f. 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 will be taken from each individual claiming benefits. Each individual's statement would become a part of the evidence submitted to the administrative office of the department of workforce development.

g. 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.

h. 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 that 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.

i. The requirements in subrules 24.25(1) and 24.25(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.

j. 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 will be taken if the individual continues in claim status.

k. 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 requester for inclusion in the labor dispute report to the unemployment insurance services division.

l. The employer will receive separate notices of claim filing for each claimant and shall make any protest in the appropriate section on the Notice of Claim. The employer will receive a copy of the decision that may be appealed.

m. The employer will use the Notice of Separation or Refusal of Work to report separations from work by employees for reasons of voluntary leaving, misconduct and job refusal, but not labor disputes.

24.25(3) *Initial determination.* 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 will promptly review the evidence submitted and issue a decision to interested parties, who have ten days from the date of mailing the decision to the last known address of record to appeal the decision.

This rule is intended to implement Iowa Code section 96.5.

[**ARC 8789C**, IAB 1/8/25, effective 2/12/25]

871—24.26(96) Labor dispute—policy.

24.26(1) 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.

24.26(2) 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) governs.

b. If the relationship is severed by the employee, Iowa Code section 96.5(1) governs.

24.26(3) 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.

24.26(4) Any individual unemployed because of failure or refusal to cross a picket line during a labor dispute is considered as involved in such labor dispute.

24.26(5) Appeals of the department's initial determination of a labor dispute issue are heard by an administrative law judge, whose decision may be appealed to the employment appeal board.

24.26(6) 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 will be held to have involuntarily left employment.

a. The division presumes that any strike or lockout is being conducted in a lawful manner unless there is evidence to the contrary. The division presumes 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. If an injunction request for actual or threatened violence, unlawful impedance of ingress or egress, or other unlawful conduct is denied due to such conduct not being established, the division presumes that the picket line is peaceful absent evidence to the contrary.

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

24.26(7) 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 are not 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.

24.26(8) A labor dispute involves a stoppage of work at the plant or establishment. If there is no stoppage of work, the individual who leaves employment is deemed to have voluntarily quit.

24.26(9) 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.

24.26(10) 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) will 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.

24.26(11) 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 the relationship with the employer and obtains bona fide employment elsewhere.

This rule is intended to implement Iowa Code sections 96.5(3) and 96.5(4).

[**ARC 8789C**, IAB 1/8/25, effective 2/12/25]

871—24.27(96) Date of submission and extension of time for payments and notices.

24.27(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 will 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 24.27(1)*"a"* and *"b,"* on the date it is received by the division.

24.27(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 will 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 will designate personnel who are to decide whether an extension of time will be granted.

c. No submission will 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 will issue an appealable decision to the interested party.

24.27(3) Delivery by mail. Any notice, report form, determination, decision, or other document mailed by the division will 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 is presumed to be the date of the document, unless otherwise indicated by the facts.

24.27(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 is 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 is presumed to be the date of the document, unless otherwise indicated by the facts.

This rule is intended to implement Iowa Code section 96.7.

[**ARC 8789C**, IAB 1/8/25, effective 2/12/25]

871—24.28(96) Interstate benefits.

24.28(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 who do not reside in the state(s) in which wage credits were earned.

24.28(2) The division shall determine unemployment benefit claims for interstate claimants in accordance with applicable state and federal law.

This rule is intended to implement Iowa Code section 96.20.

[**ARC 8789C**, IAB 1/8/25, effective 2/12/25]

871—24.29(96) Payment of benefits to interstate claimants.

24.29(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.

b. Definitions. In addition to terms defined in 17.1, the following definitions apply to this rule unless the context clearly requires otherwise:

(1) "Interstate benefit payment plan." The plan approved by the national association of state workforce agencies under which benefits shall be payable to unemployed individuals who do not reside in 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.

c. Registration for work.

(1) Each interstate claimant will be registered for work as legally required by the agent state. This registration will be deemed to meet the registration requirements of the liable state.

(2) Each agent state will report to the respective liable state 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 that the claimant has available benefit credits in that state, then claims will be filed only against that state as long as benefit credits are available there. Thereafter, the claimant may file claims against any other state having 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 effective date of an interstate claim is the Sunday of the week the claim was filed, unless proof is obtained from another state that the claimant should have filed in Iowa.

e. Claim for benefits. 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.

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.

24.29(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 8789C**, IAB 1/8/25, effective 2/12/25]

871—24.30(96) Combined wage claim.

24.30(1) Purpose of plan. The combined wage program enables an unemployed worker with covered employment or wages in more than one state to combine all employment and wages in one state 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.

b. The benefit year, base period, qualifying wages, benefit rate, and duration of benefits under the unemployment compensation law of the agent state is applicable to a combined wage claimant.

c. The rights of the individual under the combined wage claim plan are determined by the paying state after the combining of all wages available from the liable 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 will 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 will be applied to the combined wage claim.

e. The paying state is the state in which the claim is filed unless the individual does not qualify after the transfer has been completed or the claimant is a commuter, meaning that the person travels on a daily or regular basis from the state of residence to a separate state where the person works.

24.30(2) Exception to combining wage credits. Wages and employment are not transferable to the paying state if:

a. Any employment and wages have been transferred to any other paying state and not returned unused,

b. Wages have been used by the transferring state as the basis of a monetary determination that established a benefit year, and

c. Any employment and wages have been canceled or are unavailable due to a transferring state determination made prior to the request for transfer.

24.30(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 that said claimant will be paid.

This rule is intended to implement Iowa Code section 96.20.

[**ARC 8789C**, IAB 1/8/25, effective 2/12/25]

871—24.31(96) Department-approved training. Department-approved training allows 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. It includes technical, skill-based, or job readiness training intended for pursuing a career. Upon departmental approval, the claimant is exempt from the work search requirement

for continued benefit eligibility benefits. To be eligible for department-approved training programs and to maintain continuing participation therein, the individual must meet the following requirements:

24.31(1) The claimant applies to the department demonstrating:

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 obtained;

d. The occupation the training is allowing the claimant to maintain or pursue; and

e. The training plan, indicating the requirements needed to complete the certification or degree.

24.31(2) A claimant may receive unemployment insurance while attending a training course approved by the department if:

a. The educational establishment is a college, university or technical training institution;

b. The training is completed 104 weeks or less from the start date; and

c. The individual is enrolled and attending as a full-time student, as defined by the institution.

While attending the approved training course, the claimant need not be available for work or actively seeking work, except if the hours of the training are outside the regular hours worked in the base period employment. After completion of department-approved training, to continue eligibility for unemployment insurance, the claimant may place no restriction on employability. The claimant must be able to work, available for work, and actively searching for work. The claimant may be subject to disqualification for any refusal of work without good cause after completing training.

24.31(3) The claimant must show satisfactory attendance and progress in the training course to be considered for a subsequent approval.

This rule is intended to implement Iowa Code section 96.4.

[**ARC 8789C**, IAB 1/8/25, effective 2/12/25]

871—24.32(96) Training extension benefits.

24.32(1) Training extension benefits provide continued benefit eligibility, allowing an individual to pursue a training program for entry into a high-demand or high-technology occupation. Training extension benefits are available to an individual who voluntarily quit with good cause attributable to the employer or who was laid off or from full-time employment in a declining occupation or who was involuntarily separated from full-time employment due to a permanent reduction of operations.

24.32(2) The weekly benefit amount is pursuant to the same terms and conditions as regular unemployment benefits and the benefits are for a maximum of 26 times the weekly benefit amount of the claim that resulted in eligibility. Contributory and reimbursable employers will be relieved of charges for training extension benefits.

24.32(3) Enrollment must be full-time, as defined by the training institution, and courses must be designed to prepare the individual for a high-demand or high-technology occupation. The department will make available on its website and at workforce centers a list of high-demand, high-technology, and declining occupations.

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 that requires a high degree of training in the sciences, engineering, or other advanced learning area and that 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.

24.32(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 for training extension benefit eligibility to continue.

24.32(5) Training benefits will 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. Benefits will 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 Iowa Code section 96.3(5).

[**ARC 8789C**, IAB 1/8/25, effective 2/12/25]

871—24.33 Reserved.

871—24.34(96) Trade Act of 1974. Unemployment benefits payable to claimants under the Trade Act of 1974 (P.L. 93-618) are 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.

This rule is intended to implement 19 U.S.C. Sections 2101 through 2497b as amended November 1, 2024.

[**ARC 8789C**, IAB 1/8/25, effective 2/12/25]

871—24.35(96) Extended benefits.

24.35(1) *Purpose.* Extended benefits are defined by Iowa Code section 96.1A(20).

24.35(2) *Determination of when extended benefits are paid.*

a. When paid. The state "on" indicator, as defined by Iowa Code section 96.1A(29), determines when extended benefits are paid in this state.

b. When not paid. The state "off" indicator, as defined by Iowa Code section 96.1A(28), determines when extended benefits are not paid in this state.

c. Period of payment. The extended benefit period is defined in Iowa Code section 96.1A(19).

d. Rate of insured unemployment. See Iowa Code section 96.1A(31).

24.35(3) *Notice of the beginning and ending of an extended benefit period.*

a. Notice to individuals. The department will 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 that will not end prior to the beginning of the extended benefit.

(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.

b. Reserved.

24.35(4) *Amount and duration of extended benefits.*

a. Eligibility period. The eligibility period is defined in Iowa Code section 96.29(6).

b. 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.

24.35(5) *Eligibility requirements for extended benefits.* The individual is required to actively seek, apply for or accept suitable work as per the current extended benefits proclamation.

This rule is intended to implement Iowa Code section 96.29.

[**ARC 8789C**, IAB 1/8/25, effective 2/12/25]

871—24.36(96) Disaster benefits. Unemployment benefits payable under 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, Title 20, Chapter V, Parts 625 and 650.

This rule is intended to implement Iowa Code section 96.7(2).

[**ARC 8789C**, IAB 1/8/25, effective 2/12/25]

871—24.37(96) UCFE claims. Benefits under the Federal Employer's Compensation Act. Unemployment benefits for civilian federal employees are determined in accordance with the applicable state law and rules as well as the rules of the United States Department of Labor published in the Code of Federal Regulations, Title 20, Chapter V, Parts 609, 615, 616, and 650. These benefits are payable under the Federal Employees Compensation Account, 5 U.S.C. 8509, and are based on wages earned by civilians in covered federal employment.

This rule is intended to implement 20 CFR Sections 10.0 through 25.203 as amended November 1, 2024.

[**ARC 8789C**, IAB 1/8/25, effective 2/12/25]

871—24.38(96) UCX claims.

24.38(1) Unemployment benefits for ex-military personnel, in addition to being determined in accordance with applicable Iowa law and rules, will be determined in substantial compliance with the rules and guidelines of the United States Department of Labor published in the Code of Federal Regulations, Title 20, Chapter V, Parts 614 and 650.

24.38(2) These benefits are payable under the Ex-Service Member's Unemployment Compensation Act of 1958, 5 U.S.C. 8521-8525.

This rule is intended to implement 10 U.S.C. Sections 1141 through 1155 as amended November 1, 2024.

[**ARC 8789C**, IAB 1/8/25, effective 2/12/25]

871—24.39(96) Temporary extended unemployment compensation.

24.39(1) Overpayments will be offset up to and including 100 percent of the federal extended unemployment compensation benefit payment.

24.39(2) Waiver of overpayments.

a. Individuals who have received amounts of extended unemployment compensation to which they were not entitled are required to repay the amounts of such extended unemployment compensation except that the state repayment may be waived if the department determines that:

(1) The payment of such 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 are considered:

(1) Whether a material statement or representation was made by the individual in connection with the application for 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 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 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 that was erroneous or inaccurate or otherwise wrong.

c. In determining whether equity and good conscience exist, the following factors are 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 8789C**, IAB 1/8/25, effective 2/12/25]

871—24.40(96) School definitions.

24.40(1) Educational institution is defined in Iowa Code section 96.1A(12).

24.40(2) Educational service is defined in Iowa Code section 96.4(5)*"d."*

24.40(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 that consist of teaching in formal classroom and seminar situations, tutoring, or lecturing in the activity of imparting knowledge; or of services that consist of directing or supervising the instructional activities of others; or services that consist of counseling, advising, or otherwise determining curriculum, courses, and academic pursuits for students.

(2) Research: Services performed for an educational institution that 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 that is varied in character and requiring 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 that 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 that 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.

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.

24.40(4) Institution of higher education is defined in Iowa Code section 96.1A(25).

24.40(5) 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.

24.40(6) 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 means the same as a quarter period. If the educational institution operates on a trimester basis, then term means 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 who perform services for educational institutions 12 months of a calendar year or years.

24.40(7) 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.

24.40(8) Between terms or academic years denial means any week of unemployment that 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.

This rule is intended to implement Iowa Code sections 96.1A(12), 96.1A(25), and 96.4(5).

[**ARC 8789C**, IAB 1/8/25, effective 2/12/25]

871—24.41(96) Determining eligibility of school claims after employer protest.

24.41(1) Claim filed. When a claim has been filed by an employee of an educational institution, the department sends a Notice of Claim to the educational institution. To protest the claim, the educational institution returns the notice to the department, including 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 the Notice of Claim.

24.41(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 results in a disqualification, the effective starting date of the disqualification is determined as follows:

a. No earlier than the effective starting date of the claim. If the job offer was prior to the beginning date of the claim and the claimant refuses the offer, the issue is adjudicated as a voluntary quit.

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 will 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 is adjudicated as a voluntary quit section.

24.41(3) Professional employee. Unemployment insurance payments that are based on school employment shall not be paid to a professional employee for any week of unemployment that 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 terms. However, unemployment insurance payments may be made that are based on non-school-related wage credits pursuant to subrule 24.41(6).

24.41(4) Nonprofessional employee.

a. Unemployment insurance payments that are based on school employment may not be paid to a nonprofessional employee for any week of unemployment that 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 24.41(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 paragraph 24.2(1) *"e."*

24.41(5) 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 may 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 will 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.

24.41(6) Benefits based on services performed in an educational institution for periods between academic years or terms that are denied to an individual will result in the denial of the use of such wage credits. However, if sufficient non-school 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.

24.41(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 that has as its primary function civic, philanthropic or public assistance purposes does not meet the definition of an educational institution. Community action programs that 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 that 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.

24.41(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 that 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."*

24.41(9) Vacation period and holiday recess. With respect to any services performed in any capacity while employed by an educational institution, unemployment insurance payments may not be paid to any individual for any week that 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. The provision of subrule 24.52(6) could also apply in this situation.

24.41(10) Substitute teachers.

a. Substitute teachers are professional employees and 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 subparagraph 24.15(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 deemed unemployed persons pursuant to subparagraph 24.15(2)*"i"*(3).

d. Substitute teachers engaged in on-call employment are not automatically disqualified but may be eligible pursuant to subparagraph 24.15(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, and

(4) 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 24.19(19).

24.41(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 will have the separation adjudicated as a voluntary quit.

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 24.19(19) and 24.19(22).

24.41(12) 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 will be disqualified under the "between terms denial" provision.

24.41(13) Continuing supplemental (part-time) school employment after loss of non-school 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 pursuant to Iowa Code section 96.7(3)*"a"*(2).

This rule is intended to implement Iowa Code section 96.4.

[**ARC 8789C**, IAB 1/8/25, effective 2/12/25]

871—24.42(96) Noncovered school-related employment.

24.42(1) See rule 871—23.20(96). 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.

24.42(2) See rule 871—23.21(96).

This rule is intended to implement Iowa Code section 96.1A(16)*"g."*

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871—24.43(96) Church school coverage. Schools affiliated with a church, as per 871—subrule 16.27(7), are exempt from coverage but may volunteer coverage by request to the department. Schools not affiliated with a church are covered employers with insured work.

This rule is intended to implement Iowa Code section 96.1A(16)*"g"*(6).

[**ARC 8789C**, IAB 1/8/25, effective 2/12/25]

871—24.44(96) Athletes—disqualifications. "Athletes," as used in Iowa Code section 96.5(9), applies 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 performed for compensation in covered wages. Auxiliary personnel, such as coaches, trainers, etc., are not considered professional athletes.

24.44(1) As used in Iowa Code section 96.5(9), "services performed by an individual, 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.

24.44(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.

24.44(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 are determined by the department after considering custom and practice within a particular sport, published dates for beginning and ending of a season and any other information bearing upon such determination.

24.44(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 that 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.

24.44(5) Benefits that 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.

24.44(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.

24.44(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.

24.44(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).

[**ARC 8789C**, IAB 1/8/25, effective 2/12/25]

871—24.45(96) Voluntary shared work. The voluntary shared work program provides that employers facing a temporary shortfall may reduce the work hours of all 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. Additional information may be obtained by contacting the voluntary shared work coordinator. 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 it to the employer, who will submit it 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.

24.45(1) The duration of a shared work plan is between 4 and 52 weeks. Any requests for subsequent plans will be reviewed by the department.

24.45(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.

24.45(3) A plan that 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 that the factors necessitating the modification were not foreseeable at the time the plan was submitted.

24.45(4) The department retains discretion to approve, deny, or revoke an approved plan.

24.45(5) Employer requirements.

a. For each week that a voluntary shared work employer has an active plan, the employer will submit a certification of hours worked by each employee covered under the plan in the form or manner directed by the department. This includes a part-time employee provided that the employee meets all other requirements.

b. The first employer weekly certification is due no later than the Monday following the effective date of the employer's approved work share plan. All subsequent weekly employer certifications are due no later than Monday (close of business) immediately following the benefit week. If the employer fails to submit the weekly certification by Monday immediately following the benefit week, the department will have good cause to terminate the employer's work share plan.

This rule is intended to implement Iowa Code section 96.40.

[**ARC 8789C**, IAB 1/8/25, effective 2/12/25]

871—24.46(96) Child support intercept. The term "benefits" for child support intercept purposes means 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.

24.46(1) *Information furnished to child support recovery unit.* The department will 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.

24.46(2) *Action taken by child support recovery unit.* The child support recovery unit will contact the claimant to afford claimant opportunity to enter into an agreement regarding amounts to be deducted and withheld.

24.46(3) *Processing of payments.* The child support recovery unit will furnish to the department the name and address of the designated public official to whom the amount deducted will be remitted. After the deduction, the remaining balance is credited to the claimant.

24.46(4) *Notice to claimant.* The department will send a notice to the claimant explaining the beginning date and the amount of the weekly benefit deduction that satisfies the individual's child support obligation to the child support recovery unit. This notice, which explains the authority for the deduction and the claimant's right of appeal, will be issued when the first deduction is made from the benefit payment.

24.46(5) *Appeal rights on the child support deduction.*

a. Any appeal on a child support deduction is limited to either the validity of the 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 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.

[**ARC 8789C**, IAB 1/8/25, effective 2/12/25]

871—24.47(96) Alien. An alien is defined as a person who is not a citizen or a national of the United States. An alien is a person owing allegiance to another country or government. 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.

24.47(1) To identify illegal nonresident aliens, each claimant, at the establishment of a benefit year will be asked 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 marked accordingly.

b. If the answer is "no," the claimant will 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 provided to the department. 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—18.10(96), prosecution on overpayments.

24.47(2) Disqualification of aliens. Color of law permanent residence is defined as:

a. 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;

b. 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;

c. 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);

d. 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

e. An alien who has been formally granted deferred action or nonpriority status by the U.S. Citizenship and Immigration Services.

24.47(3) 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 that 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	Admitted to work on a petition of an employer. Can only work for that employer unless permission is granted

Class of worker		Symbol on I-94	Employment Permitted
			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).

[**ARC 8789C**, IAB 1/8/25, effective 2/12/25]

871—24.48(96) References.

24.48(1) All references to the Code of Federal Regulations (CFR) and United States Code (U.S.C.) in this chapter are to the laws as amended as of November 1, 2024.

24.48(2) All references to the Social Security Act refer to 42 U.S.C. Sections 301-1397mm, as amended as of November 1, 2024.

24.48(3) All references to the Federal Unemployment Tax Act refer to 23 U.S.C. Sections 3301-3311, as amended as of November 1, 2024.

24.48(4) All references to the Workforce Innovation and Opportunity Act refer to 29 U.S.C. Sections 3101-3361, as amended as of November 1, 2024.

24.48(5) All references to the Americans with Disabilities Act of 1990 refer to 42 U.S.C. Sections 12101-12213, as amended as of November 1, 2024.

24.48(6) All references to Public Law 96-499 refer to the Foreign Investment in Real Property Act of 1980, as amended as of November 1, 2024.

24.48(7) All references to the Trade Act of 1974 refer to 19 U.S.C. Sections 2101-2497b, as amended as of November 1, 2024.

24.48(8) All references to the Federal Employer's Compensation Act refer to 20 CFR Sections 10.0-25.203, as amended as of November 1, 2024.

24.48(9) All references to the Ex-Service Member's Unemployment Compensation Act of 1958 refer to 10 U.S.C. Sections 1141-1155, as amended as of November 1, 2024.

24.48(10) All references to the Immigration and Nationality Act refer to 8 U.S.C. Sections 1101-1537, as amended as of November 1, 2024.

24.48(11) All references to the Railroad Unemployment Insurance Act refer to 45 U.S.C. Sections 351-369, as amended as of November 1, 2024.

24.48(12) All references to the Interstate Handbook for Interstate Claims-Taking refer to ET Handbook No. 392, published by the United States Department of Labor Employment and Training Administration, as amended and in effect as of November 1, 2024.

This rule is intended to implement Iowa Code chapter 96.

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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 that 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, 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 the same as defined in Iowa Code section 96.1A(5).

"Claim" means the same as defined in 871—subrule 24.1(9).

"Claimant" means the same as defined in 871—subrule 24.1(10).

"Earnings" means the remuneration for services performed.

"Employing unit" means the same as defined in Iowa Code section 96.1A(15).

"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 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 an investigation and recovery section investigator.

"Local office" means the workforce development center office in which claims functions are performed.

"Material fact" means a fact that necessarily has some bearing on the subject matter, such as is necessary to determine the issue.

"Misconduct" means the same as defined in Iowa Code section 96.5(2).

"Misrepresentation" means to give misleading or deceiving information or omit material information; and 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 number" means the same as defined in 871—subrule 24.1(31).

"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 defined in Iowa Code section 96.1A(40).

"Week" means the same as defined in Iowa Code section 96.1A(41).

This rule is intended to implement Iowa Code chapter 96.

[**ARC 8361C**, IAB 11/13/24, effective 12/18/24]

871—25.2(96) Policy of the investigation and recovery unit. The policy of the investigation and recovery unit is to:

25.2(1) Take aggressive action to prevent, detect, and deter benefits paid through error and to investigate and penalize fraud;

25.2(2) Maximize the recovery of benefit overpayments; and

25.2(3) Seek prosecution when the unit believes a person has committed a serious violation of the employment security law.

This rule is intended to implement Iowa Code sections 96.11(1), 96.16, and 96.17(2).

[**ARC 8361C**, IAB 11/13/24, effective 12/18/24]

871—25.3(96) Functions of the investigation and recovery unit. The functions of the investigation and recovery unit are to:

25.3(1) Investigate and make determinations on issues within the unit's scope that are referred by the general public, employing units, agency personnel, other agencies, or anonymous sources. The unit examines allegations of the following type:

a. Failure to report earnings while receiving benefits.

b. Collusion between claimant and employer, or between two or more claimants, in fraudulently obtaining or attempting to obtain benefits.

c. Utilizing the identity of another to fraudulently obtain or attempt to obtain benefits.

d. Employing units fraudulently attempting to evade unemployment insurance coverage and tax assessment. The unit determines the resulting status of claimants employed by these entities.

e. Claims involving contrived or fictitious employment (e.g., family relationships).

f. 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.

g. 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.

h. 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. "Alien" means the same as described in rule 871—24.47(96).

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 8361C**, IAB 11/13/24, effective 12/18/24]

871—25.4(96) Allegation of claimant fraud.

25.4(1) If the party alleging fraud supplies sufficient information to proceed with an investigation, the information is to be forwarded to the investigation and recovery unit, which will advise the alleging party that the unit will fully investigate. The unit is to provide its findings to the alleging party if the investigation may impact the alleging party's employer account of claim for benefits.

25.4(2) If the results of the investigation indicate that a disqualification would have resulted for the period benefits were paid, the unit is to schedule an informal fact-finding interview to allow testimony by the parties. The unit may recommend separate fact-finding interviews if necessary.

This rule is intended to implement Iowa Code sections 96.16 and 96.11(10).

[**ARC 8361C**, IAB 11/13/24, effective 12/18/24]

871—25.5(96) Allegation of employing unit fraud.

25.5(1) If the party alleging fraud supplies sufficient information to proceed with an investigation, the information is to be forwarded to the investigations and recovery unit. The unit will advise the alleging party that the unit will fully investigate. The unit may seek the assistance of the tax unit staff. The unit is to provide its findings to the alleging party if the investigation may impact the alleging party's employer account of claim for benefits.

25.5(2) If the results of the investigation indicate that misrepresentation occurred on the part of the employer, the unit is to schedule an informal fact-finding interview to allow testimony by the parties.

This rule is intended to implement Iowa Code sections 96.16 and 96.11(10).

[**ARC 8361C**, IAB 11/13/24, effective 12/18/24]

871—25.6(96) Investigation of fraud (procedure).

25.6(1) Upon receipt of an allegation of fraudulent activity, the investigation and recovery unit will prepare an investigation file containing all necessary documents, assign an investigation number, and assign the case 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 any necessary source.

25.6(3) An investigator has the authority to request all necessary information 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. Any person, when requested by an investigator to produce records or give testimony, must be available to give testimony to the department or to produce records within a reasonable time. If any person does not comply with the investigator's request for the person to give testimony to the department or produce records, a subpoena may be issued summoning the person 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 to ensure the production of such records.

25.6(4) The investigation and recovery unit may seek the assistance of field auditors.

25.6(5) The investigator may surveil any relevant individual or location.

25.6(6) Upon completion of the investigation, a determination shall be made as to whether fraudulent activity has occurred. If there is fraudulent activity, appropriate corrective action shall be initiated. The unit is to provide its findings to the alleging party if the investigation may impact the alleging party's employer account of claim for benefits. The case may be prepared for prosecution if warranted.

25.6(7) 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 8361C**, IAB 11/13/24, effective 12/18/24]

871—25.7(96) Determination of overpayment by reason of claimant's fault or fraud.

25.7(1) The investigation and recovery unit may determine that a claimant has received benefits to which the claimant was not entitled due to the claimant's own fault, the employer's fault, the agency's fault, or fraud as provided in Iowa Code section 96.16.

25.7(2) A dated notice of such determination shall promptly be mailed to the claimant at the claimant's last-known address. Such notice shall advise the claimant of the reason for and total amount of the overpayment as well as the benefit weeks involved. The determination is final unless the claimant, within ten calendar days of the date shown on the notification, files a written request for review or appeal.

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.

25.7(4) The claimant may directly appeal the decision, without request for review, to the department of inspections, appeals, and licensing.

25.7(5) Claimants affected by determinations made in accordance with this rule have the same rights to further appeal as are provided in Iowa Code section 96.6.

25.7(6) When a determination has become final, the benefits shall be recovered.

a. If a claimant does not immediately repay the overpayment on demand, 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.

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
$1,000 to $1,499	$ 150	6 to 10
$1,500 to $1,999	$ 200	7 to 10
$2,000 to $2,999	$ 250	8 to 12
$3,000 and over	$ 300	10 to —

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 demand letter shall be sent 30 days later. The demand letter 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 demand letter. The first repayment is expected ten days from the date of the demand letter and the additional repayments every 30 days thereafter until the debt is paid in full. The following minimum repayment agreement is acceptable to the department, though the department reserves the right to accept or reject any proposed repayment agreement.

d. After sending the demand letter, the department may proceed with any appropriate lien or 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 department may pursue the same type of action where a claimant defaults on a repayment agreement.

e. If the department receives a cash repayment of an overpayment, 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 department will retain the money 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. 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 96.1A(37), 96.3(3), 96.3(7), 96.4(3), 96.5(1), 96.5(3), 96.6(1), 96.8(5), 96.11(1), and 96.16.

[**ARC 8361C**, IAB 11/13/24, effective 12/18/24]

871—25.8(96) Recovery of benefit overpayments when benefits are erroneously received.

25.8(1) *Good faith overpayment.* The department shall recover good faith overpayments. The department shall issue the overpayment decision to the claimant's last-known address or through the claimant's preferred contact method. Once the overpayment amount has been established, an overpayment schedule will be established to leave an audit trail even if the claimant fully repays the overpayment in one payment.

a. The department shall mail a first statement of overpayment to the claimant's last-known address. This statement will request full repayment.

b. If a claimant fails to respond to the first statement of overpayment, a demand letter shall be sent 30 days later notifying the claimant that full repayment must be made. If the claimant cannot make full repayment, the department will consider a monthly repayment agreement.

c. If an individual has acted in good faith and is without fault in claiming federal unemployment compensation under Unemployment Compensation Federal Employees (UCFE), Unemployment Compensation Ex-servicemembers (UCX), Trade Readjustment Allowances (TRA), or Disaster Unemployment Assistance (DUA), and it is subsequently determined that the individual is not entitled to the benefits, the department has the right to recover the benefits in accordance with the procedure outlined in subrule 25.8(1). Any federal unemployment compensation overpayments recovered will be credited to the appropriate account of the United States. Three years after 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 TRA, Trade Adjustment Assistance, or DUA 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. The department may attempt to collect the overpayment by filing a lien on the claimant in the manner provided in Iowa Code section 96.14(3).

b. The employer's account may be relieved of overpayments caused by fraud or misrepresentation.

c. If it is found that an individual has received benefits through misrepresentation and has been assessed with an overpayment under UCFE or 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).

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 8361C**, IAB 11/13/24, effective 12/18/24]

871—25.9(96) Administrative penalties.

25.9(1) An administrative penalty may be imposed on a claimant as per Iowa Code section 96.5(8).

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. The administrative penalty recommended for falsification ranges from three weeks through the end of the benefit year. The department may also consider the filing of criminal 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 that sets forth the specific penalty being applied. The investigator will determine the degree and severity of the penalty based upon the nature of the offense and the facts.

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. Comparative analysis of employer wage reports and benefit payments.

b. Information obtained by a local office.

c. Tips and leads from other sources.

d. Cross-checking of information regarding vital statistics from the department of health and human services.

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 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) 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.

25.9(6) 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.

25.9(7) A criminal conviction of a claimant for fraud or a court order 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 8361C**, IAB 11/13/24, effective 12/18/24]

871—25.10(96) Prosecution on overpayments.

25.10(1) When, after an investigation, the department determines an overpayment occurs due to misrepresentation or fraud, the case shall be given a thorough and detailed review to determine if it may be referred to a county attorney or the attorney general for prosecution for fraud.

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 does 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 8361C**, IAB 11/13/24, effective 12/18/24]

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 by the investigator.

25.11(2) A handwriting sample may be taken from claimant 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).

[**ARC 8361C**, IAB 11/13/24, effective 12/18/24]

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 with regard to benefit payments.

25.12(2) The completed documents 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, Audit Notice of Potential Overpayment, 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 65-5352, 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) will be charged a fee of $25 per claimant.

This rule is intended to implement Iowa Code section 96.11(1).

[**ARC 8361C**, IAB 11/13/24, effective 12/18/24]

871—25.13(96) Duplicate benefit warrants.

25.13(1) *Undelivered warrant.* Any warrant issued in payment of benefits that is returned undelivered to the department will be canceled 90 days after the original issue date unless it can be mailed to the correct address.

25.13(2) *Canceled warrant.* Warrants are canceled as per Iowa Code section 96.11(7). Any individual who has an outdated warrant may contact the department for assistance.

25.13(3) *Lost and uncashed warrant.*

a. The payee of a warrant issued in payment of benefits that is lost, stolen, mutilated, destroyed, or canceled under conditions cited in subrule 25.13(1) or 25.13(2) may contact the department for assistance.

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) shall be followed.

(2) If the warrant has not been cashed, the department shall issue a stop payment order on the warrant and issue Form 68-0163, Affidavit and Agreement for Issuance of Duplicate Warrant, to the individual. The completed 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 department.

d. The department will then request that the director of the department of administrative services issue a duplicate warrant, which the department will mail to the claimant.

e. If the claimant should cash the original warrant after the stop payment order is in place, an overpayment shall be set up and the department may refer the matter for criminal prosecution.

f. If the claimant should find the original warrant after the duplicate warrant has been issued, the claimant will send the original warrant to the department.

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 claimant will prepare Form 68-0320, Affidavit as to Forged Endorsement, in duplicate, and the claimant's signature must be notarized.

(2) The claimant is required to file a police report with the local law enforcement agency and return a copy of the police report to the department.

(3) The claimant will send a copy of the original warrant, the notarized affidavit, and a copy of the police report to the department for review.

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.

25.13(5) *Employer account credit.* At the time of cancellation of any outstanding benefit warrant, the employer account shall be credited with the amount of the warrant 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 Iowa Code sections 96.9(7) and 96.11(1).

[**ARC 8361C**, IAB 11/13/24, effective 12/18/24]

871—25.14(96) Payments of benefits due a deceased person.

25.14(1) 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 are 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 that were due will 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 will, 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 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 necessaries 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 director of the department of administrative services will void any unredeemed warrant or warrants payable to a deceased person. Once the warrant is surrendered, the director of the department of administrative services will 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 fully discharges the department of its obligation with respect to the claims covered thereby and no other person may claim or assert any right to them.

25.14(4) Any person claiming entitlement to the payment of benefits under this regulation shall present the 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 a claim. In the event no timely claim is made for the benefit payment, the benefits will not be paid but will remain in the unemployment compensation fund.

This rule is intended to implement Iowa Code sections 96.9(3), 96.9(7), and 96.11(1).

[**ARC 8361C**, IAB 11/13/24, effective 12/18/24]

871—25.15(96) Back pay—benefit recovery and charging.

25.15(1) Recovery and charging of back pay is governed by Iowa Code section 96.3(8).

a. The department shall first attempt to reach an agreement with the individual and the employer.

b. The burden of proof is on the employer to establish the dollar amount of the back pay award that is remuneration for lost wages and the specific time period to which the remuneration applies.

25.15(2) If the department reaches an agreement with the individual and the employer as per Iowa Code section 96.3(8), then the employer's account shall be relieved of benefit charges in an amount equal

to the amount remitted by the employer to the department. If the department fails to reach an agreement, then the benefit charges are not relieved until the benefits paid to the individual are recovered.

This rule is intended to implement Iowa Code section 96.3(8).

[**ARC 8361C**, IAB 11/13/24, effective 12/18/24]

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 overpayment 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 department will provide the department of revenue with the claimant's name and social security number.

25.16(2) The department of revenue will process the offset according to Iowa Code section 421.65.

25.16(3) In the event that the amount of the offset exceeds the remaining overpayment, the department will issue to the individual a payment equal to the amount of the excess.

This rule is intended to implement Iowa Code section 96.11.

[**ARC 8361C**, IAB 11/13/24, effective 12/18/24]

871—25.17(96) Federal payment offset. Pursuant to Section 303(m) of the federal Social Security Act (42 U.S.C. §503) and 26 U.S.C. §6402(f), both as amended and in effect as of October 23, 2024, the department will utilize the treasury offset program in order to collect covered unemployment compensation.

This rule is intended to implement Iowa Code section 96.3(7).

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CHAPTER 26
CONTESTED CASE PROCEEDINGS

[Prior to 9/24/86, Employment Security[370] Ch 6]
[Former 345—6.5(96) and 6.8(96) transferred to 345—9.2(17A,96) and 9.1(17A,96) respectively, IAC 6/10/92]
[Prior to 3/12/97, Job Service Division [345] Ch 6]

871—26.1(17A,96) Applicability. The rules in this chapter govern the procedures for contested case proceedings brought pursuant to Iowa Code chapter 96.

[**ARC 8688C**, IAB 12/25/24, effective 1/29/25]

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

"Contested case" means a proceeding defined in Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case in Iowa Code section 17A.10A. It specifically includes any appeal from a determination of a representative of the department or any appeal or request for a hearing by an employer or employing unit from an experience rating, charge determination or other decision affecting its liability. Except as provided in subrule 26.16(4), a final decision of the employment appeal board of the department of inspections, appeals, and licensing shall constitute final agency action. A presiding officer's decision shall be the final decision of the department if there is no appeal therefrom to the employment appeal board of the department of inspections, appeals, and licensing or if the appeal is made directly to the district court in lieu of filing an appeal with the employment appeal board of the department of inspections, appeals, and licensing.

"Presiding officer" means an administrative law judge employed by the department of inspections, appeals, and licensing.

[**ARC 8688C**, IAB 12/25/24, effective 1/29/25]

871—26.3(17A,96) Appeal of unemployment benefits contested case.

26.3(1) An unemployment benefits contested case must be filed by a party within ten calendar days of mailing the initial determination of benefits as determined by the postmark or date stamp to the party's last-known address. The appeal must be in writing and delivered by mail, facsimile, email, online, or in person to the department of inspections, appeals, and licensing's unemployment insurance appeals bureau at UIAB Administrative Hearings Division, 502 East 9th Street, Des Moines, Iowa 50319. An online appeal is filed by completing and submitting an online appeal form available on the workforce development website.

26.3(2) The appeal should state the following:

a. The name, address and social security number of the claimant;

b. A reference to the decision from which the appeal is taken; and

c. The grounds upon which the appeal is based.

26.3(3) Notwithstanding the provisions of subrule 26.3(1), a contributory employer, which has not previously received a notice of the filing of a valid claim for benefits, may appeal an individual's eligibility to receive benefits within 30 calendar days from the mailing date of the quarterly statement of benefit charges.

26.3(4) Also notwithstanding the provisions of subrule 26.3(1), a reimbursable employer, which has not previously received a notice of the filing of a valid claim for benefits, may appeal an individual's eligibility to receive benefits within 15 calendar days from the mailing date of the quarterly billing of benefit charges.

[**ARC 8688C**, IAB 12/25/24, effective 1/29/25]

871—26.4(17A,96) Appeal of employer liability contested case.

26.4(1) An appeal from a decision of the tax bureau of the department concerning employer status and liability, assessments, contribution (tax) rate, successorship, workers' status, and all questions regarding coverage of a worker or group of workers, must be filed by a party no later than 30 calendar days of mailing the tax bureau's decision as determined by the postmark or date stamp to the party's last-known

address. The appeal must be in writing and delivered by mail, facsimile, email, online, or in person to Tax Bureau, Iowa Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319.

26.4(2) The appeal should state the following:

a. The name, address, and Iowa employer account number of the employer;

b. The name and title of the person filing the appeal;

c. A reference to the decision from which the appeal is taken; and

d. The grounds upon which the appeal is based.

[**ARC 8688C**, IAB 12/25/24, effective 1/29/25]

871—26.5(17A,96) Notice of hearing.

26.5(1) Notices of hearing shall be sent to all parties at their last-known address at least ten days in advance of the hearing date by first-class mail, email, or other electronic means. Notices of hearing shall contain the information required by Iowa Code section 17A.12(2) and any additional information required by statute or rule.

26.5(2) Unless otherwise precluded, the parties in a contested case may waive any provision of this chapter pursuant to Iowa Code section 17A.10.

26.5(3) A hearing will be promptly scheduled and conducted by telephone unless a party requests that it be held in person. In-person hearings will be located at the Wallace State Office Building or at a site designated by UIAB. The party requesting an in-person hearing will ordinarily be required to travel the greater distance if all parties are not located near the same hearing site. A request for an in-person hearing may be denied if factors such as the distance between the parties, the number of parties or the health of any party make it impractical or impossible to conduct a fair hearing in person. An in-person hearing may be scheduled at the discretion of the presiding officer to whom the contested case is assigned or by the manager or chief administrative law judge of the appeals bureau. At the discretion of the presiding officer, witnesses or representatives may be allowed to participate via telephone in an in-person hearing.

26.5(4) Whenever it appears that other parties should be joined to dispose of all issues in a contested case, the presiding officer may so order and may grant such continuance to hold such additional proceedings upon notice to all parties.

26.5(5) Any number of appeals involving similar issues of law or fact may be consolidated for hearing so long as no substantial rights of any party would be prejudiced by so doing.

[**ARC 8688C**, IAB 12/25/24, effective 1/29/25]

871—26.6(17A,96) Recusal. A presiding officer shall withdraw from participation in the hearing or the making of any decision in a contested case in accordance with provisions outlined in chapter 481—10.9(17A).

[**ARC 8688C**, IAB 12/25/24, effective 1/29/25]

871—26.7(17A,96) Withdrawals, dismissals, and continuance.

26.7(1) An appeal may be withdrawn at any time prior to the issuance of a decision upon the request of the appellant and with the approval of a presiding officer. Requests for withdrawal may be made in writing or orally, provided the oral request is recorded by a presiding officer.

An appeal may be dismissed upon the request of a party or in the agency's discretion when the issue or issues on appeal have been resolved in the appellant's favor.

26.7(2) A hearing may be postponed by the presiding officer for reasons stated in 481—subrule 10.17(3), either upon the presiding officer's own motion or upon the request of any party in interest. A party's request for postponement should be made not less than three days prior to the scheduled hearing and may be in writing or oral, provided the oral request is recorded by the presiding officer. A party shall not be granted more than one postponement except in the case of extreme emergency.

26.7(3) For good cause shown, the presiding officer may reopen the record, and with notice to all parties, schedule another hearing.

"Good cause," for purposes of this rule, is defined as an emergency circumstance that is beyond the control of the party and that prevents the party from being able to participate in the hearing. Examples of good cause include but are not limited to death, sudden illness, or accident involving the party or the party's

immediate family (spouse, partner, children, parents, siblings) or other circumstances evidencing an emergency situation that was beyond the party's control and was not reasonably foreseeable.

Examples of circumstances that do not constitute good cause include but are not limited to a lost or misplaced notice of hearing, confusion as to the date and time for the hearing, failure to follow the directions on the notice of hearing, oversleeping, or other acts demonstrating a lack of due care by the party.

26.7(4) If necessary, the presiding officer may hear, ex parte, additional information regarding the request for reopening. The granting or denial of such a request may be used as grounds for appeal to the employment appeal board of the department of inspections, appeals, and licensing upon the issuance of the presiding officer's final decision in the case.

26.7(5) If good cause for reopening has not been shown, the presiding officer may make a decision based upon whatever evidence is properly in the record or, in appropriate cases, may enter default as set forth in rule 871—26.13(17A,96).

[**ARC 8688C**, IAB 12/25/24, effective 1/29/25]

871—26.8(17A,96) Discovery. Discovery procedures are subject to rule 481—10.13(17A).

[**ARC 8688C**, IAB 12/25/24, effective 1/29/25]

871—26.9(17A,96) Ex parte communications. Ex parte communication is subject to rule 481—10.23(17A).

[**ARC 8688C**, IAB 12/25/24, effective 1/29/25]

871—26.10(17A,96) Motions. Motion practice is subject to rule 481—10.15(10A,17A) with the following exceptions:

1. Written responses to motions may be filed within five days after the motion is served.
2. Motions pertaining to the hearing must be filed and served at least five days prior to the hearing date.

[**ARC 8688C**, IAB 12/25/24, effective 1/29/25]

871—26.11(17A,96) Prehearing conference. Prehearing conferences are subject to rule 481—10.16(10A,17A), with the exception that requests for a prehearing conference must be filed within three days prior to hearing.

[**ARC 8688C**, IAB 12/25/24, effective 1/29/25]

871—26.12(17A,96) Subpoenas for witnesses and documents. Subpoenas are subject to rule 481—10.14(10A,17A) and Iowa Code section 17A.13, with the exception that subpoena requests must be filed within three days prior to hearing.

[**ARC 8688C**, IAB 12/25/24, effective 1/29/25]

871—26.13(17A,96) Conduct of hearings. The conduct of hearings is governed by rule 481—10.20(17A), with the exception of the additional following subrules:

26.13(1) The presiding officer shall begin each hearing with a brief statement identifying the parties and issues, outlining the history of the case, advising the parties of their appeal rights and announcing what matters, if any, will be officially noticed. Any party may inspect and use any portion of the administrative file necessary for the presentation of its case. The administrative file may include information from the claimant's files maintained in the agency's computer system.

26.13(2) Each party shall be afforded an opportunity for an opening statement and final arguments.

26.13(3) The hearing shall be confined to evidence relevant to the issue or issues stated on the notice of hearing.

26.13(4) If, during the course of a hearing, it appears to the presiding officer that an issue not set forth in the notice of hearing may affect the presiding officer's decision, the presiding officer shall so notify the parties and announce willingness to continue taking testimony on the underlying factual matters if the parties agree to waive on record further notice and make no objection to continuing. If any party objects, the presiding officer shall postpone or continue the hearing and cause new notices of hearing, containing all

relevant issues, to be sent to the parties. Notwithstanding, voluntary quits and discharges generally shall be construed to constitute the single issue of separation from employment so that evidence of either or both types of separation may be received in a single hearing.

26.13(5) If factual issues generally relevant to a party's eligibility or liability for benefits but unrelated to the underlying facts in controversy in the present contested case are exposed, the presiding officer may remand the issue to the appropriate section of the department for investigation and preliminary determination.

26.13(6) If a party fails to appear for the hearing, the presiding officer may proceed with the hearing or decide the appealing party is in default and dismiss the appeal as provided in Iowa Code section 17A.12(3). If no decision has been issued, the absent party may make a written request to reopen the record for good cause as defined in subrule 26.7(3). The presiding officer may reopen the record for additional material, relevant and nonrepetitious evidence not submitted at the case hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If an absent party responds to the notice of hearing after the record has been closed and any party that has participated is no longer on the telephone line or present, the presiding officer shall not take the evidence of the late party and the party may file a written request to reopen the record.

c. Once a decision has been entered, the absent party may file an appeal to the employment appeal board to request a new hearing.

26.13(7) Whenever necessary, the presiding officer may require the attendance at a hearing of department employees having knowledge of the facts in controversy or having technical knowledge concerning the issues raised in appeal.

a. If the primary issue is the claimant's ability to work, availability for work or work search, the department may be named as respondent. The presiding officer may call department personnel having knowledge of the facts in controversy as witnesses.

b. If the issue on appeal is an offer of or recall to work or a job referral by a local workforce development center, both the employer making the offer or recall and the workforce development center representative making the referral may be witnesses at the hearing.

c. If the issue on appeal is the claimant's refusal of employment because of wages, the presiding officer may take the testimony of the workforce development representative having knowledge of prevailing wages in the vicinity. The presiding officer may also obtain testimony and evidence of the hours and other conditions of work for similar jobs in the area.

26.13(8) At the discretion of the presiding officer, witnesses may be excluded from the hearing room or telephone hearing until called to testify. The presiding officer shall admonish such witnesses not to discuss the case amongst themselves until after the record has been closed. All witnesses shall be subject to examination by the presiding officer and by all parties.

26.13(9) The presiding officer may expel or refuse admittance to any party, witness or other person whose conduct at the hearing is disorderly.

26.13(10) If the parties agree that no dispute of material facts exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant material evidence either by stipulation or otherwise as agreed by the parties, without the necessity of a formal evidentiary hearing.

[**ARC 8688C**, IAB 12/25/24, effective 1/29/25]

871—26.14(17A,96) Evidence. Rules of evidence are followed in accordance with Iowa Code section 17A.14.

[**ARC 8688C**, IAB 12/25/24, effective 1/29/25]

871—26.15(17A,96) Recording costs.

26.15(1) The presiding officer shall electronically record all evidentiary hearings, prehearing conferences and hearings on motions, all of which constitute a part of the record of the contested case. A party may, at its own expense, also record any hearing electronically or by certified shorthand reporter.

26.15(2) Upon request of a party, the department shall provide a copy of the whole or a part of the record at a cost, unless there is further appeal, in which event the record shall be provided to all parties at no cost.

[**ARC 8688C**, IAB 12/25/24, effective 1/29/25]

871—26.16(17A,96) Decisions.

26.16(1) The presiding officer shall issue a written, signed decision as soon as practicable after the closing of the record in a contested case. Each decision shall:

a. Set forth the issues, the appeal rights, a concise history of the case, the findings of essential facts, the reasons for the decision and the actual disposition of the case;

b. Be based on the kind and quality of evidence upon which reasonably prudent persons customarily rely for the conduct of their serious affairs, even if none of such evidence would be admissible in a jury trial in the Iowa district court; and

c. Be sent by first-class mail, email, or other electronic transmission to each of the parties in interest and their representatives.

26.16(2) Copies of all presiding officer decisions shall be kept on file for public inspection at the administrative office of the department of workforce development, filed according to hearing (appeal) number and indexed by the social security number of the claimant.

26.16(3) A presiding officer's decision allowing benefits shall result in the prompt payment of all benefits due. An appeal shall not stay the payment of benefits. A presiding officer's decision reversing an allowance of benefits shall include a statement of overpayment of benefits erroneously paid.

26.16(4) A presiding officer's decision constitutes final agency action in an employer liability contested case.

a. Any party in interest may file with the presiding officer a written application for rehearing within 20 days after the issuance of the decision. A request for rehearing is deemed denied unless the presiding officer grants the rehearing request within 20 days after its filing.

b. Any party in interest may file a petition for judicial review in the Iowa district court within 30 days after the issuance of the decision or within 30 days after the denial of the request for rehearing.

26.16(5) In a claimant benefit contested case, final agency action shall be a presiding officer's decision, if no aggrieved party appealed the decision to the employment appeal board within 15 days, or the decision of the employment appeal board, if the aggrieved party appealed the decision to that tribunal.

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

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

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

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[1] At its meeting held August 3, 1999, the Administrative Rules Review Committee voted to impose a 70-day delay on amendments published in the July 28, 1999, Iowa Administrative Bulletin as **ARC 9215A**.

CHAPTERS 27 to 40
Reserved

CHAPTER 41
REQUEST FOR WAIVER OF ADMINISTRATIVE RULE

871—41.1(17A) Requests for waiver of rules. Any person may file a request for waiver of an administrative rule of the workforce development department[871] by writing a proper request, which is received by the Division Administrator, Division of Unemployment Insurance Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. All requests for waiver of an administrative rule should be in writing and meet all requirements set out in this chapter. A request is deemed filed when it is received by the division administrator. The agency should provide the requester with a file-stamped copy of the request if the requester provides the agency an extra copy for this purpose. The request should be emailed, typewritten or legibly handwritten in ink and must substantially conform to the following form:

IOWA WORKFORCE DEVELOPMENT

(Name of person requesting waiver)	}	Request for waiver of (specify rule for which waiver is requested)

The petition should provide the following information:

1. The name and address of the person or entity for whom a waiver is requested.
2. A description and citation of the specific rule for which a waiver is requested.
3. The specific waiver requested, including the precise scope and time period that the waiver will extend.
4. Relevant facts that the requester believes would justify a waiver. This statement should include a signed statement from the petitioner attesting to the accuracy of the facts.
5. A history of the agency's action relative to the requester.
6. Any information regarding the agency's treatment of similar cases, if known.
7. The name, address and telephone number of any person inside or outside state government who would be adversely affected by the grant of the request, or who otherwise possesses knowledge of the matter with respect to the waiver request.
8. Signed release of information authorizing persons with knowledge regarding requests to furnish the agency with information pertaining to the waiver, if necessary.

[**ARC 8689C**, IAB 12/25/24, effective 1/29/25]

871—41.2(17A) Procedural requirements.

41.2(1) The department should acknowledge a request upon receipt. Within 30 days after receipt of a request for waiver of an administrative rule, the agency verifies that the requester has provided a copy to anyone who is required to receive one by provision of law. The agency may also require the requester to send a copy of the request to other persons who would have an interest in the subject matter.

41.2(2) The agency grants or denies a request for waiver of all or a portion of a rule as soon as practical. This will be done within 120 days of its receipt, unless requester agrees to a later date. However, if a waiver request has been filed in a contested case proceeding, the agency shall grant or deny the request no later than the time at which the final decision in that contested case is issued. Failure of the agency to grant or deny such a request within the required time period is a denial of that request by the agency. If the request for waiver relates to a time requirement of an administrative rule, the request must be received before the time specified in the rule has expired. Within seven days of its issuance, any response issued under this rule shall be transmitted, normally by depositing it in the mail, to the requester or the person to whom the response pertains and to any other person entitled to such notice by any provision of law.

[**ARC 8689C**, IAB 12/25/24, effective 1/29/25]

871—41.3(17A) Criteria for waiver.

41.3(1) The director of the workforce development department decides whether circumstances justify the granting of a waiver, given relevant facts. The requester assumes the burden of persuasion involving a request for waiver of an administrative rule. The requester must provide clear and convincing evidence that

compliance with the rule will create an undue hardship on the person for whom the waiver is requested; the waiver of the rule on the basis of the particular circumstances relevant to that specified person would be consistent with public interest; substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested; and the waiver of the rule in the specific case would not prejudice the substantial legal rights of any person.

41.3(2) The agency will deny a request for waiver of an administrative rule if the request waives any statute in whole or part. The agency should deny any request if it does not comply with the provisions of this rule. The agency may grant waiver of a rule if it finds that application of all or a portion of the rule to the circumstances of the specified person would not, to any extent, advance or serve any purposes of the rule. The agency will deny a request unless there are exceptional circumstances justifying an exception to the general application of the rule in otherwise similar circumstances. A waiver will be denied if the material facts presented in the request are not true or material facts have been withheld. The agency may request additional information from the requesting party relative to the application and surrounding circumstances.

[**ARC 8689C**, IAB 12/25/24, effective 1/29/25]

871—41.4(17A) Public inspection. All waiver requests and responses shall be indexed by administrative rule number and available to members of the public for inspection at Workforce Development Department, 1000 East Grand Avenue, Des Moines, Iowa. Identifying information concerning individuals as unemployment benefit claimants and taxpayers and other identifying information may be withheld by the agency in order to protect the confidentiality of parties as required by Iowa Code chapter 96.

[**ARC 8689C**, IAB 12/25/24, effective 1/29/25]

These rules are intended to implement Iowa Code chapter 17A.

[Filed 7/24/00, Notice 1/26/00—published 8/23/00, effective 9/27/00]

[Filed ARC 8689C (Notice ARC 8309C, IAB 10/30/24), IAB 12/25/24, effective 1/29/25]

CHAPTER 42
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

[Prior to 3/12/97 see Employment Services[341] Ch 2]

The department of workforce development hereby adopts, with the following exceptions and amendments, the Uniform Rules of Agency Procedure relating to public records and fair information practices, which are published at www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf on the general assembly's website.

[**ARC 8690C**, IAB 12/25/24, effective 1/29/25]

871—42.1(22,84A) Definitions. As used in this chapter:

"Agency." In lieu of the words "(official or body issuing these rules)", insert "the Department of Workforce Development".

"Person" means an individual, corporation, governmental entity, estate, trust, partnership, association, or any other legal entity.

"Personally identifiable information." In lieu of the words "an individual in a record that identifies the individual and that is contained in a record system", insert "a person in a record that identifies the person and that is contained in a record system".

"Record system." In lieu of the words "an individual, number, symbol, or other unique retriever assigned to an individual", insert "a person, number, symbol or other unique retriever assigned to the person".

[**ARC 8690C**, IAB 12/25/24, effective 1/29/25]

871—42.3(22,84A) Request for access to records.

42.3(1) *Location of record.* In lieu of the words "(insert agency head)", insert "director". Also, in lieu of the words "(insert agency name and address)", insert "Department of Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319".

42.3(2) *Office hours.* In lieu of the words "(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)", insert "8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays, and legal holidays".

42.3(4) *Response to requests.* In lieu of the words "X.4", insert "42.4(22,84A)".

42.3(7) *Fees.*

c. *Supervisory fee.* In lieu of the words "(specify time period)", insert "one-half hour".

[**ARC 8690C**, IAB 12/25/24, effective 1/29/25]

871—42.4(22,84A) Access to confidential records. In lieu of the words "rule X.3", insert "rule 42.3(22,84A)".

[**ARC 8690C**, IAB 12/25/24, effective 1/29/25]

871—42.6(22,84A) Procedure by which additions, dissents, or objections may be entered into certain records. In lieu of the words "(designate office)", insert "the Department of Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319".

[**ARC 8690C**, IAB 12/25/24, effective 1/29/25]

871—42.7(22,84A) Consent to disclosure by the subject of a confidential record. Remove the parentheses around "(and, where applicable, the time period during which the record may be disclosed)".

[**ARC 8690C**, IAB 12/25/24, effective 1/29/25]

871—42.9(22,84A) Disclosure without the consent of the subject.

42.9(1) An open record is routinely disclosed without the consent of the subject.

42.9(2) To the extent allowed by law, disclosure of a confidential record may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without consent of the subject:

a. For a routine use as defined in rule 871—42.10(22,84A).

b. To another governmental agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such governmental agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

c. To the legislative services agency under Iowa Code section 2A.3.

d. Disclosure in the course of employee disciplinary proceedings.

e. In response to a court order or subpoena.

f. To the citizens' aide under Iowa Code section 2C.9(3).

[**ARC 8690C**, IAB 12/25/24, effective 1/29/25]

871—42.10(22,84A) Routine use.

42.10(1) Defined. "Routine use" means the disclosure of a record without the consent of the subject, for a purpose that is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

42.10(2) To the extent allowed by law, the following uses are considered routine uses of all agency records:

a. Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may upon request of any officer, employee, and agent, or on the custodian's own initiative, determine what constitutes legitimate need to use a confidential record.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

c. Disclosure to the department of inspections, appeals, and licensing for matters in which it is performing services or functions on behalf of the agency.

d. Disclosure to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

[**ARC 8690C**, IAB 12/25/24, effective 1/29/25]

871—42.11(22,84A) Release to a subject.

42.11(1) The subject of a confidential record may file a written request to review a confidential record about that person as provided in rule 871—42.6(22,84A). However, the agency will not release the following records to the subject:

a. The identity of a person providing information to the agency when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. A record need not be disclosed to the subject when it is the work product of an attorney or is otherwise privileged.

c. A peace officer's investigative report should be withheld from the subject, except as required by Iowa Code section 22.7(5).

d. As otherwise authorized by law.

42.11(2) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

[**ARC 8690C**, IAB 12/25/24, effective 1/29/25]

871—42.12(22,84A) Availability of records.

42.12(1) *Open records.* Agency records are open for public inspection and copying unless otherwise provided by law or rule.

42.12(2) *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Labor market records made available to the agency under an agreement with the United States Department of Labor, Bureau of Labor Statistics, and withheld from public inspection pursuant to 29 Code of Federal Regulations 70 dated July 1, 1987.

b. County economic development survey records made available to the agency under an agreement with the department of workforce development, and withheld from public inspection pursuant to Iowa Code section 96.11(7).

c. Sealed bids received prior to the time set for public opening of bids pursuant to Iowa Code section 72.3.

d. Tax records made available to the agency pursuant to Iowa Code sections 422.20 and 422.72.

e. Records that are exempt from disclosure under Iowa Code section 22.7.

f. Minutes of closed meetings of a government body pursuant to Iowa Code section 21.5(4).

g. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)*"d."*

h. Those portions of the agency's staff manuals, instructions or other statements issued that set forth criteria or guidelines to be used by the agency staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would, pursuant to Iowa Code sections 17A.2 and 17A.3:

(1) Enable law violators to avoid detection;

(2) Facilitate disregard of requirements imposed by law; or

(3) Give a clearly improper advantage to persons who are in an adverse position to the agency.

i. Records that constitute attorney work product, attorney-client communications, or that are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10, and 622.11, Iowa R.C.P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

j. Unemployment insurance division tax and claim records pursuant to Iowa Code section 96.11(6) unless the records become part of the record in a hearing before an administrative law judge in a contested case pursuant to Iowa Code chapter 96.

42.12(3) *Authority to release confidential records.* The agency may have discretion to disclose some confidential records that are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute that authorizes limited or discretionary disclosure as provided in rule 871—42.4(22,84A). If the agency initially determines that it will release such records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 42.4(3).

[**ARC 8690C**, IAB 12/25/24, effective 1/29/25]

871—42.13(22,84A) Personally identifiable information. This rule describes the nature and extent of personally identifiable information that is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 871—42.1(22,84A). For each record system, this rule describes the legal authority for the collection of that information, the means of storage of that information and indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

42.13(1) The record systems maintained by the agency are:

a. Labor market records. These records are collected from employing units under an agreement with the United States Department of Labor, Bureau of Labor Statistics, for the purposes of analyzing and distributing general labor market information including current employment statistics, employment by occupation statistics, local area unemployment statistics, wage and hour statistics, and permanent mass layoff and plant closing statistics. These records are stored in an automated data processing system and may be retrieved by a personal identifier.

b. County economic development survey records. These records are collected from employing units and individuals under an agreement with the department of workforce development, for the purposes of providing local economic development groups with statistical information on the number and characteristics of individuals available for employment within a county as well as providing employee

wage by occupation and benefit information. These records are stored in an automated data processing system and may be retrieved by a personal identifier.

c. Personnel files. The agency maintains files containing information about employees, families and dependents, and applicants for positions with the agency. The files include payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 22.7(11). Some of these records are stored in an automated data processing system and may be retrieved by a personal identifier.

d. Other groups of records routinely available for public inspection. This paragraph describes groups of records maintained by the agency other than in a record system as defined in rule 871—42.1(22,84A):

(1) Rulemaking. Rulemaking records may contain information about persons making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. These records are not stored in an automated data processing system and may not be retrieved by a personal identifier.

(2) Committee records. Agendas, minutes, and materials presented to the department of workforce development coordinating committee are available from the custodian, except those records concerning closed sessions that are exempt from disclosure under Iowa Code section 21.5(4). Coordinating committee records contain information about persons who participate in meetings. This information is collected pursuant to Iowa Code sections 21.3 and 84A.2(4). These records are not stored in an automated data processing system and may not be retrieved by a personal identifier.

(3) Publications. News releases, annual reports, project reports, agency newsletters, brochures, etc., are available at the administrative office of the agency. These may contain information about persons, including agency staff or members of agency committees. These records are not stored on an automated data processing system and may not be retrieved by a personal identifier.

(4) Statistical reports. Periodic reports of labor market information are available from the agency. Statistical reports do not contain information about persons.

(5) Appeal decisions and advisory opinions. All final orders, decisions and opinions are open to the public except for information that is confidential according to paragraph 42.12(2)*"g."* These records may contain information about a person collected under the authority of Iowa Code section 84A.1.

(6) Published materials. The agency uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law.

(7) Policy manuals. The agency employees' manual, containing the policies and procedures for programs administered by the agency, is available in the administrative office of the agency. Subscriptions to all or part of the employees' manual are available at the cost of production and handling. Requests for subscription information should be addressed to the custodian of the record, Department of Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319. Policy manuals do not contain information about persons.

(8) All other records that are not exempted from disclosure by law.

42.13(2) All data processing systems used by the agency permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

[**ARC 8690C**, IAB 12/25/24, effective 1/29/25]

871—42.14(22,84A) Applicability. This chapter does not:

1. Require the agency to index or retrieve records that contain information about persons by that person's name or other personal identifier.

2. Make available to the general public records that would otherwise not be available under the public records law, Iowa Code chapter 22.

3. Govern the maintenance or disclosure of, notification of or access to, records in the possession of the agency that are governed by the regulations of another agency.

4. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.

5. Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings are governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations of the agency.

[**ARC 8690C**, IAB 12/25/24, effective 1/29/25]

These rules are intended to implement Iowa Code section 22.11.

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CHAPTER 43
PETITIONS FOR RULEMAKING

[Prior to 3/12/97 see Employment Services[341] Ch 3]

871—43.1(17A,84A) Petition for rulemaking. Any person may file a petition for rulemaking with the department of workforce development at 1000 East Grand Avenue, Des Moines, Iowa 50319. A petition is deemed filed when it is received by that office. The agency should provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose. The petition must be emailed, typewritten, or legibly handwritten in ink, and should substantially conform to the following form:

DEPARTMENT OF WORKFORCE DEVELOPMENT

Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state subject matter).	}	PETITION FOR RULEMAKING

The petition should provide the following information:

1. A statement of the specific rulemaking action sought by the petitioner, including the text or a summary of the contents of the proposed rule or amendment to a rule, and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.
2. A citation to any law deemed relevant to the agency's authority to take the action urged or to the desirability of that action.
3. A brief summary of the petitioner's arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. The names and addresses of other persons, or a description of any class of persons, known by the petitioner to be affected by, or interested in, the proposed action that is the subject of the petition.
6. Any request by the petitioner for a meeting provided for by rule 871—43.4(17A,84A).

43.1(1) The petition should be dated and signed by the petitioner or the petitioner's representative. It should also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

43.1(2) The agency may deny a petition because it does not substantially conform to the required form.

[**ARC 8691C**, IAB 12/25/24, effective 1/29/25]

871—43.2(17A,84A) Briefs. The petitioner may attach a brief to the petition in support of the action. The agency may request a brief from the petitioner or from any other person concerning the substance of the petition.

[**ARC 8691C**, IAB 12/25/24, effective 1/29/25]

871—43.3(17A,84A) Inquiries. Inquiries concerning the status of a petition for rulemaking may be made to Director, Department of Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319.

[**ARC 8691C**, IAB 12/25/24, effective 1/29/25]

871—43.4(17A,84A) Agency consideration.

43.4(1) Within 14 days after the filing of a petition, the agency should submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Upon request by the petitioner in the petition, the agency should schedule a brief and informal meeting between the petitioner and the agency, a member of the agency, or a member of the staff of the agency, to discuss the petition. The agency may request the petitioner to submit additional information or argument concerning the petition. The agency may also solicit comments from any person on the substance of the petition. Any person may submit comments on the substance of the petition.

43.4(2) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the agency should in writing, deny the petition and notify the petitioner of its action and the specific grounds for the denial, or grant the petition and notify the petitioner that it has instituted rulemaking proceedings on the subject of the petition. The petitioner is deemed notified of the denial or grant of the petition on the date when the agency mails or delivers the required notification to the petitioner.

43.4(3) Denial of the petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the agency's rejection of the petition.

[**ARC 8691C**, IAB 12/25/24, effective 1/29/25]

These rules are intended to implement Iowa Code chapters 17A and 84A.

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CHAPTER 44
DECLARATORY ORDERS

[Prior to 3/12/97 see Employment Services[341] Ch 4]

871—44.1(17A) Petition for declaratory order. Any person may file a petition with the agency for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the department of workforce development at 1000 East Grand Avenue, Des Moines, Iowa 50319. If the petition deals with a statute within the express jurisdiction of one of the divisions, it shall be forwarded to that division for determination. Service of petitions for district court review of all agency decisions, rulings and actions (where such service is required by Iowa Code chapter 17A) will be made by the agency. Declaratory orders made by the divisions are considered final rulings for the agency with regard to Iowa Code chapter 17A.

A petition is deemed filed when it is received by that office. The agency shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency with an extra copy for this purpose. The petition should be emailed, typewritten or legibly handwritten in ink and should substantially conform to the following form:

DEPARTMENT OF WORKFORCE DEVELOPMENT

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	}	PETITION FOR DECLARATORY ORDER

The petition should provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by the petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by rule 871—44.4(17A,84A).

The petition should be dated and signed by the petitioner or the petitioner's representative. It should also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

[**ARC 8692C**, IAB 12/25/24, effective 1/29/25]

871—44.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the agency should give notice of the petition to all persons not served by the petitioner pursuant to rule 871—44.6(17A) to whom notice is required by any provision of law. The agency may also give notice to any other persons.

[**ARC 8692C**, IAB 12/25/24, effective 1/29/25]

871—44.3(17A) Intervention.

44.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order are allowed to intervene in a proceeding for a declaratory order.

44.3(2) Any person who files a petition for intervention prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the department of workforce development.

44.3(3) A petition for intervention should be filed at 1000 East Grand Avenue, Des Moines, Iowa 50319. Such a petition is deemed filed when it is received by that office. The agency will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention should be typewritten or legibly handwritten in ink and should substantially conform to the following form:

DEPARTMENT OF WORKFORCE DEVELOPMENT

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	}	PETITION FOR INTERVENTION

The petition for intervention should provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition should be dated and signed by the intervenor or the intervenor's representative. It should also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

[**ARC 8692C**, IAB 12/25/24, effective 1/29/25]

871—44.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The department of workforce development may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

[**ARC 8692C**, IAB 12/25/24, effective 1/29/25]

871—44.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to Director, Department of Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319.

[**ARC 8692C**, IAB 12/25/24, effective 1/29/25]

871—44.6(17A) Service and filing of petitions and other papers.

44.6(1) *When service required.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order should be served upon each of the parties of record to the proceeding and on all other persons identified in the petition for declaratory order or petition for intervention, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

44.6(2) *Filing—when required.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the director of the Department of Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319.

44.6(3) *Method of service, time of filing, and proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided by rule 871—26.11(17A,96).

[**ARC 8692C**, IAB 12/25/24, effective 1/29/25]

871—44.7(17A) Consideration. Upon request by petitioner, the department of workforce development schedules a brief and informal meeting between the original petitioner, all intervenors and a member of the staff of the department of workforce development to discuss the questions raised. The agency may solicit comments from any person on the questions raised, and any person may submit comments.

[**ARC 8692C**, IAB 12/25/24, effective 1/29/25]

871—44.8(17A) Action on petition.

44.8(1) After receipt of a petition or a declaratory order, the director of the department of workforce development or designee takes action on the petition as required by Iowa Code section 17A.9(5).

44.8(2) The date an order is issued or refused is defined in rule 877—26.2(17A,96).

[**ARC 8692C**, IAB 12/25/24, effective 1/29/25]

871—44.9(17A) Refusal to issue order.

44.9(1) The department of workforce development will not issue a declaratory order where prohibited by Iowa Code section 17A.9(1) and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

a. The petition does not substantially comply with the required form.

b. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the department of workforce development to issue an order.

c. The agency does not have jurisdiction over the questions presented in the petition.

d. The questions presented by the petition are also presented in a current rulemaking, contested case, or other agency or judicial proceeding that may definitively resolve them.

e. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

f. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate.

g. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.

h. The petition is not based upon facts calculated to aid in the planning of future conduct but is instead based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a previously made agency decision.

i. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that petitioner.

j. The petitioner requests the agency to determine whether a statute is unconstitutional on its face.

44.9(2) A refusal to issue a declaratory order will indicate the specific grounds for the refusal and constitutes final agency action on the petition.

44.9(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue a ruling.

[**ARC 8692C**, IAB 12/25/24, effective 1/29/25]

871—44.10(17A) Contents of declaratory order—effective date. In addition to the ruling itself, a declaratory order contains the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

[**ARC 8692C**, IAB 12/25/24, effective 1/29/25]

871—44.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order are mailed promptly to the original petitioner and all intervenors.
[**ARC 8692C**, IAB 12/25/24, effective 1/29/25]

871—44.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the department of workforce development, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the department of workforce development. The issuance of a declaratory order constitutes final agency action on the petition.
[**ARC 8692C**, IAB 12/25/24, effective 1/29/25]

These rules are intended to implement Iowa Code chapter 17A.

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