

CHAPTER 160
EMPLOYER REQUIREMENTS RELATING TO
NON-ENGLISH SPEAKING EMPLOYEES

[Prior to 10/21/98, see 347—Ch 160]

875—160.1(91E) Purpose and scope. The rules in this chapter are intended to implement and clarify the division of labor's responsibilities under Iowa Code chapter 91E. These rules apply to employees employed on an hourly basis. These rules apply to employers whose total employment of employees paid on an hourly basis in this state exceeds 100.

[ARC 2489C, IAB 4/13/16, effective 5/18/16]

875—160.2(91E) Definitions. The definitions in Iowa Code section 91E.1 are adopted with the following clarifications or additions:

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

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

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

“*Commissioner*” means the commissioner of the division of labor services of the department of workforce development or the commissioner's designee.

“*Primary*” means of first rank, importance, or value.

“*Work site*” means a single physical location where business is conducted or where services or industrial operations are performed, for example: a factory, mill, store, hotel, restaurant, movie theatre, farm, ranch, bank, sales office, warehouse, or central administrative office.

875—160.3(91E) Knowledge of English. The Act and these rules apply to employees who do not speak, read, write, or understand English well enough to understand the terms, conditions, and daily responsibilities of employment. An employee who can understand the following in English is not covered by these rules:

160.3(1) The hours of work.

160.3(2) The hourly wage.

160.3(3) All mandatory and elective benefits.

160.3(4) The job duties.

160.3(5) The safety and health risks of the job and appropriate methods of protection.

160.3(6) Information and training on hazardous chemicals in the employee's work area.

160.3(7) Safety signs and symbols that warn of potential dangers and hazards at the work site.

160.3(8) The purpose of forms used by the employer including:

a. Orientation,

b. Insurance,

c. Accidents at the work site, and

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

160.3(9) The employer's requirement to provide an interpreter if more than 10 percent of the employer's employees speak the same non-English language.

160.3(10) An ability to effectively communicate with a nurse or other medical personnel at the work site.

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875—160.4(91E) Interpreters.

160.4(1) Interpreter available. An interpreter shall be made available at a work site where more than 10 percent of the employees speak the same non-English language. At least one interpreter shall be available at each work site for each entire shift on which the non-English speaking employees are employed.

160.4(2) *Interpreters provided.* An interpreter shall be provided to all non-English speaking employees in order to comply with subrules 160.3(1) to 160.3(10).

160.4(3) *Spanish-speaking interpreters.* If a Spanish-speaking interpreter is needed, the employer shall select an interpreter from the list of interpreters developed by the commissioner.

160.4(4) *Interpreters for languages other than Spanish.* If an interpreter is needed for a language other than Spanish, the employer shall select an interpreter capable of interpreting information needed relative to the items listed in subrules 160.3(1) to 160.3(10).

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875—160.5(91E) Community services referral agent.

160.5(1) *Referral agent available.* A referral agent shall be employed by the employer when the employer has more than 10 percent of its employees who speak the same non-English language. The employer shall provide to employees at each work site the name of the person who is designated as having the primary responsibility as the referral agent. The information shall be provided in the language of the non-English speaking employees.

160.5(2) *Referral agent's responsibilities.* The primary responsibility of the person employed as the employer's referral agent shall be to develop and maintain a list of contact persons and agencies, telephone numbers, and addresses of the community services provided in the work site's community. The referral agent shall assist non-English speaking employees in working with and through those services.

875—160.6(91E) Active recruitment of non-English speaking employees. Active recruitment includes, but is not limited to, the following:

160.6(1) Placement of employment opportunity advertising or notices in non-English publications or non-English advertising in English language publications located, or within a general circulation located in another state more than 500 miles from the place of employment;

160.6(2) Placement of employment opportunity advertising or notices through non-English radio, television, signs, posters or any other form of media located in another state more than 500 miles from the place of employment;

160.6(3) The use of any non-English language by an employer, or representative of the employer, at any point in the recruitment or hiring process; or

160.6(4) The solicitation of present or past non-English speaking employees for the purpose of recruitment or hiring of other non-English speaking employees residing in other states more than 500 miles from the work site.

875—160.7(91E) Employee's return to location of recruitment.

160.7(1) This rule applies to employees as defined in the Act who:

- a. Are English and non-English speaking,
- b. Were recruited from a location more than 500 miles from the work site,
- c. Resign from employment within four calendar weeks of the date of initial employment, and
- d. Are employed by an employer as defined in the Act.

160.7(2) If an employee requests to return to the place of recruitment as provided in this rule, the employer shall provide public transportation at no cost to the employee. If means of public transportation is not available to the place of recruitment, the employer shall provide the transportation to the closest location to the place of recruitment. This location shall be made known to the recruit prior to hiring. If an employee requests to travel to a place other than that of recruitment, the employer is not required to provide transportation.

160.7(3) The 500-mile distance between the recruitment and work site locations shall be determined by use of official state maps in effect at the time of the recruitment.

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875—160.8(91E) Inspections. This rule pertains to enforcement of the Act.

160.8(1) Inspections shall take place at the times and places directed by the commissioner.

160.8(2) Inspections may be conducted without prior notice.

160.8(3) The commissioner may interview persons at the work site and utilize other reasonable inspection techniques including but not limited to correspondence, telephone conversation, review of written materials, and physical inspection of the work site.

160.8(4) Unnecessary disruptions to the operations at the work site will be avoided.

160.8(5) In the event the commissioner is not permitted to fully conduct an inspection, an administrative warrant may be sought.

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875—160.9(91E) Exemptions. This rule contains procedures for the application for and granting of exemptions from the requirements of the Act or the rules in this chapter. These rules shall be construed to secure a prompt and just conclusion to a proceeding subject to these rules.

160.9(1) An exemption may be granted by the commissioner where reasonable.

160.9(2) An applicant desiring an exemption shall file a written application with the commissioner which shall include:

- a. The name, address and telephone number of the applicant;
- b. The address or location of the work site affected;
- c. A description of the operation or type of work site;
- d. A listing of the section of the Act or rules to which the exemption would apply;
- e. A representation of the impact of compliance on the part of the applicant;
- f. A representation of why the exemption would be reasonable;
- g. If the applicant is an employer, a description of how employees and non-English speaking employees have been informed of the application and their rights to petition the commissioner for a hearing;
- h. If the applicant is an employee or non-English speaking employee, a description of how the employer has been informed of the application and the employer's rights to petition the commissioner for a hearing;
- i. A request for a hearing, if one is desired; and
- j. Any other information the commissioner may request.

160.9(3) At the time the application is received, the commissioner shall promptly provide the applicant with a notice of receipt of application which shall be posted where notices are customarily posted for employees. If the applicant is an employee or non-English speaking employee, the employer shall post the notice when provided to the employer.

160.9(4) If the applicant is an employer, any affected employee or affected non-English speaking employee may request a hearing. If the applicant is an employee or non-English speaking employee, the affected employer may request a hearing. Any request for a hearing on the application shall be done by notifying the commissioner within 14 calendar days of posting of the notice provided under subrule 160.9(3).

160.9(5) Hearing procedures are set forth in 875—Chapter 1.

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875—160.10(91E) Enforcement and penalties.

160.10(1) If the commissioner finds a violation subject to a civil penalty, the commissioner shall issue a notice of violation to the employer and propose a civil penalty which shall be sent to the employer by certified mail. The employer shall have 14 calendar days from receipt of the notice of violation or proposed civil penalty to inform the commissioner by mail of the intent to contest the notification or proposed penalty. After receipt of the employer's notification, the commissioner shall afford the employer the opportunity for a hearing. The hearing shall be conducted pursuant to the rules in 875—Chapter 1.

160.10(2) If the commissioner finds any violations subject to a criminal penalty, the commissioner shall notify the county attorney for the county in which the violation occurred or the employer's work

site is located in the county where the employee or non-English speaking employee was employed or to be employed.

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