

WORKFORCE DEVELOPMENT DEPARTMENT [871]

Notice of Intended Action

Pursuant to the authority of Iowa Code section 96.11, the Director of the Workforce Development Department hereby gives Notice of Intended Action to amend Chapter 24, Claims and Benefits, Iowa Administrative Code.

The proposed new rule 24.10(96) is adopted pursuant to S.F. 2160 passed by the 2008 session of the Iowa General Assembly.

The proposed new rule 24.10 provides criteria for the legislation. Senate File 2160 states that an unemployment insurance accounting firm which demonstrates a continuous pattern of failing to participate in the initial unemployment benefit hearings shall be denied permission to represent

employers before the Department of Workforce Development. The rule defines maximum suspension criteria and allows the Department to reduce suspensions based upon all the facts of the situation.

Interested persons, governmental agencies and associations may present written comments or statements on the proposed amendment not later than 4:30 p.m., August 19, 2008, to Joseph Walsh, Workforce Development Department, 1000 E. Grand Avenue, Des Moines, Iowa 50319.

A public hearing will be held at 9:30 a.m. on August 19, 2008, at the above address. The proposed amendment is subject to revision after the Department considers all written and oral presentations. Persons who want to convey their views orally should contact Joseph Walsh at (515)281-5082 or at the above address.

This amendment is intended to implement Iowa Code section 96.3(7) as amended and S.F. 2160 passed by the 2008 General Assembly.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5082 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend 871–Chapter 24 by adopting the following new rule:

**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 section 96.6, subsection 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 first-hand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents providing 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. 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 meets the definition of unexcused absences as defined in subrule 871 IAC 24.32(7). On

the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

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

24.10(3) If the Division Administrator finds that an entity representing employers as defined in section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, he or

she shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to 10 years on the third or subsequent occasion. Suspension by the Division Administrator constitutes final agency action and may be appealed pursuant to section 17A, subsection 19 of the code.

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 section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

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Elisabeth Buck, Director  
Iowa Workforce Development

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