BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULES I through VII pertaining to HELP-Link ) NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION )

TO: All Concerned Persons

1. On December 4, 2020, at 1:00 p.m., the Department of Labor and Industry (department) will hold a public hearing via remote conferencing to consider the proposed adoption of the above-stated rules. Because there currently exists a state of emergency in Montana due to the public health crisis caused by the coronavirus, there will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

   (a) Join Zoom Meeting, https://mt-gov.zoom.us/j/98242535528
       Meeting ID: 982 4253 5528; or
   (b) Dial by telephone, +1 406 444 9999 or +1 646 558 8656
       Meeting ID: 982 4253 5528

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., November 27, 2020, to advise us of the nature of the accommodation that you need. Please contact Laura Ducolon, Legal Division, P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-4493; facsimile (406) 444-4140; Montana TTD (406) 444-5549; or e-mail Laura.Ducolon@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: There is reasonable necessity to adopt these rules in order to implement the employer grant provisions of Chapter 415, Laws of 2019, codified at Title 39, chapter 12, part 1, MCA. There is reasonable necessity to offer the grants on a "first come, first served" basis, rather than limiting grant awards to a portion of available funds in each of specific calendar periods so that Montana employers and workers can benefit from training programs sooner rather than at a later date. The department recognizes that due to the COVID-19 pandemic Montana employers and workers are facing significantly different challenges than they did a year ago, and that those new challenges are likely to require new approaches to training just as many businesses are having to develop new ways of performing business operations. The rules are designed to have the applicant explain the training proposal and identify the clients that the proposal is intended to benefit. In order to provide maximum flexibility within the statutory framework, the grant application allows an employer to propose innovative training programs to meet the particular needs of the employer, rather than choosing from existing or established training models. The department will evaluate proposals by looking to see how likely the proposed training will provide the benefits envisioned by the statutes.
The department notes that it is also separately proposing other new rules for related programs, such as those under the EARN program act, that are similarly intended to promote worker self-sufficiency and economic independence. The department has endeavored to develop rules that allow similar programs to operate in the same general manner, and to work to the fullest amount feasible in coordination with related programs within the department as well as those operated or administered by sister agencies, such as the Department of Commerce and the Department of Public Health and Human Services. As an example, the department, in awarding grants, may take into account whether the employer has responsibly fulfilled the employer's obligations under other grant programs administered by the department.

Finally, there is reasonable necessity to adopt these rules at this time because the department has finished its unprecedented "ramping up" of emergency unemployment insurance benefits response that has been occasioned by the outbreak of the COVID-19 pandemic, and is now able to return some of department staff to their customary duties following their temporary assignment to assist with unemployment insurance benefits claims.

4. The rules as proposed to be adopted provide as follows:

**NEW RULE I  DEFINITIONS** As used in [NEW RULES I through VII], the following definitions apply:

(1) "Applicant" means an employer that is seeking a grant.

(2) "Client" means an individual participating in the HELP-Link program offered by the department, or an individual who is eligible to participate in the HELP-Link program.

(3) "Department" means the Department of Labor and Industry.

(4) "Employer" means a for-profit business, a nonprofit business, or a public entity that:

   (a) is properly registered with the secretary of state to conduct business as:

   (i) a sole proprietor, if required;

   (ii) a corporation;

   (iii) a partnership;

   (iv) a limited liability company; or

   (v) an unincorporated association; and

   (b) has Montana operations.

   (c) The term does not include an entity of state government or temporary services contractors as defined by 39-8-102, MCA.

(5) "HELP-Link" means the workforce development program operated by the department to identify workforce development opportunities focusing on specific labor force needs within the state of Montana and for other purposes as provided by Title 39, chapter 12, part 1, MCA.

(6) "Skills-based training" means training which allows the client to obtain job-specific knowledge and abilities that are relevant to work performed by employees of the employer. Skills-based training must increase the quality of tasks a client can perform, increase the number of tasks a worker can successfully
perform, or provide the ability to demonstrate that a worker can execute old tasks in new ways as a direct result of the training.

AUTH: 39-12-107, MCA
IMP: 39-12-103, 39-12-106, MCA

NEW RULE II INDIVIDUALS ELIGIBLE FOR GRANT FUNDING  
(1) Grant funding may only be provided to employers on behalf of clients.
(2) An employer seeking to apply for grant funding may contact the department to verify the employer's employee is a client. The department may verify the employee's client status upon a sufficient showing that the employer employs the employee. Requests for verification of client status may be addressed to HelpLinkmailbox@mt.gov.
(3) A client's eligibility for grant funding is determined on the date of application and approval of the application. Eligibility does not terminate if the client loses eligibility to participate in the HELP-Link program during the grant period.

AUTH: 39-12-107, MCA
IMP: 39-12-103, 39-12-106, MCA

NEW RULE III EXPENSES FOR WHICH GRANT FUNDS MAY BE USED  
(1) The following are examples of expenses for which grant funds may be used by employers for clients to meet the purposes set forth in 39-12-106, MCA:
(a) fees (tuition) for training program provided by third party vendor;
(b) cost of training materials purchased;
(c) tools and durable personal protective equipment (PPE);
(d) reasonable travel and per diem for out-of-town travel to attend training, at an amount not to exceed the rates allowed to public employees traveling on official business; and
(e) other reasonable out-of-pocket employer-paid expenses, including client wages, if approved as part of the grant award.
(2) The department reserves the right to reimbursement for grant funds paid which are used for any non-approved purpose.

AUTH: 39-12-107, MCA
IMP: 39-12-103, 39-12-106, MCA

NEW RULE IV GRANT APPLICATION PROCESS  
(1) The department shall make available workforce development grant application forms which an applicant must complete for the purpose of applying for a grant award. At minimum the application must address the purpose of the grant and its benefit to the client.
(2) Upon receipt of an application, the department will determine whether the application is complete. The department may at its sole discretion and at any time request additional information from an applicant for use in evaluating the application. The applicant may amend or withdraw a grant application before the department notifies the applicant of its decision whether to fund the grant.
(3) The department will review all applications pursuant to [NEW RULE V].
(4) The department shall notify the applicant in writing of the department's decision to approve or reject a grant application following evaluation of the application. A notice approving the application must specify the amount approved for the grant.

(5) An applicant aggrieved by the department's decision may utilize the procedure set forth in [NEW RULE VII].

AUTH: 39-12-107, MCA
IMP: 39-12-103, 39-12-106, MCA

NEW RULE V EVALUATION CRITERIA FOR GRANT APPLICATION
(1) The department shall evaluate a grant application on the basis of the content of the written grant application and any documents or materials submitted by the applicant as part of the application.

(2) The department shall evaluate grant applications in the order in which they are received. The date of receipt is the date on which the application is determined to be complete or the last date on which it is amended, whichever is later.

(3) In addition to the criteria set forth in 39-12-106, MCA, the department shall consider the following matters when evaluating a grant application:
   (a) whether the proposal reasonably relates to the employer's Montana business operations;
   (b) whether the proposed outcomes (completion rate and amount of economic improvement) are readily measurable;
   (c) whether the proposal duplicates other resources that are available to the applicant; and
   (d) the significance of the impact of the grant in furthering the purposes of the HELP Act.

(4) The department may consider such other matters as may be pertinent to the evaluation, including but not limited to whether the employer has complied with other grants previously awarded by the department.

(5) The department may award a grant for less than the full amount requested.

(6) In the event that an employer applies for multiple grants, or for multiple clients, the department may, in its discretion, deny some or all of those multiple applications in order to provide equitable treatment to other grant applicants in the distribution of grant awards. Such denial does not preclude an employer from applying in the future, so long as the client remains eligible

AUTH: 39-12-107, MCA
IMP: 39-12-103, 39-12-106, MCA

NEW RULE VI AWARD OF GRANTS AND PAYMENTS
(1) Grant funding is limited by the appropriations available for the grants.

(2) The amount of a grant that is awarded is the maximum payable for the grant. The actual disbursement of grant funds is conditioned as provided by this rule.
(3) A client is eligible for a maximum $5,000 grant.
(4) Grants are generally funded on a "first come, first served" basis, based upon the evaluation of the applications as provided by [NEW RULE V].
(5) Payment of a grant may either be made directly to a vendor or as a reimbursement to an employer. Only preapproved, verified, and actual expenses are eligible for payment.
   (a) For direct payment to a vendor, the employer must provide the department the invoice for the grant-covered purchase. If approved, the department will make payment within 30 days.
   (b) For a reimbursement payment, the employer must provide the department documentation of the purchase made, including without limitation, proof of purchase and cost within 30 days of the purchase. If approved, the department will make payment within 30 days.
(6) The department shall require that the employer enter into a financial agreement regarding use of the grant funds, audit rights, and other matters related to ensuring the proper expenditure of public funds.

AUTH: 39-12-107, MCA
IMP: 39-12-103, 39-12-106, MCA

NEW RULE VII DISPUTE RESOLUTION (1) Only an applicant has standing to request a hearing. A request for a hearing may be made when there has been a denial of:
   (a) a grant application;
   (b) the full amount requested in a grant application that has otherwise been awarded; or
   (c) a reimbursement request for a specific expense.
(2) A request for a hearing must be made in writing within 30 days of the date of mailing of the notice of denial. The request must identify the denial being disputed, and the basis upon which the dispute is being made. The request for the hearing must be sent to HelpLinkmailbox@mt.gov.
(3) A hearing requested pursuant to this rule will be conducted under the informal contested case procedures provided by 2-4-604, MCA, under the Montana Administrative Procedure Act.
(4) In a hearing under this rule:
   (a) the applicant has the burden to show that the department abused its discretion in making a determination or otherwise failed to provide a fundamentally fair process in its decision making; and
   (b) the applicant bears the burden of proof and the burden of production of evidence.
(5) A party that receives an adverse final decision under this rule may appeal to District Court in the manner provided by the Montana Administrative Procedure Act.

AUTH: 39-12-107, MCA
IMP: 39-12-103, 39-12-106, MCA
5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Laura Ducolon, P.O. Box 1728, Helena, MT 59624-1728; fax (406) 444-4140; or e-mail to Laura.Ducolon@mt.gov, and must be received no later than 5:00 p.m., December 7, 2020.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1315 E. Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, or e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

7. An electronic copy of this notice of public hearing is available through the department's web site at http://dli.mt.gov/events/calendar.asp, under the Calendar of Events, Administrative Rules Hearings Section. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on October 26, 2020, by electronic mail.

9. Pursuant to 2-4-111, MCA, the department has determined that the rule changes proposed in this notice will have a significant and direct impact upon small businesses. In line with the purposes of the HELP Act, these rules will provide direct benefit to workers and employers across Montana by investing in Montana's citizens and striving to improve employee access to and ability to succeed in improved employment, employment with health care benefits or the ability to purchase health care, and financial security. Therefore, these direct impacts on small businesses are expected to be positive by allowing employers to access grant funding to allow these purposes to be met.

10. The department's Office of Administrative Hearings has been designated to preside over and conduct this hearing.

/s/ QUINLAN L. O'CONNOR       /s/ BRENDA NORDLUND
Quinlan L. O'Connor           Brenda Nordlund, Acting Commissioner
Alternate Rule Reviewer        DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 27, 2020.