BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of New Rules I through VII pertaining to reimbursement of workers' compensation premiums due to providing high-quality work-based learning opportunities

NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On December 1, 2020, at 10:00 a.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 novel 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/92444094500 Meeting ID: 924 4409 4500; or
(b) Dial by Telephone, +1 646 558 8656 or +1 406 444 9999 Meeting ID: 924 4409 4500

The hearing will begin with a brief introduction by department staff to explain the use of the videoconference and telephonic platform. All participants will be muted except when it is their time to speak.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Labor and Industry no later than 5 p.m. on November 27, 2020, to advise us of the nature of the accommodation that you need. Please contact Nisan Burbridge, Department of Labor and Industry, P.O. Box 1728, Helena, Montana, 59624-1728; telephone (406) 444-3079; or e-mail nburbridge@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: There is reasonable necessity to adopt NEW RULES I through VII in order to implement Sec. 1, Chapter 400, Laws of 2019 (House Bill 0732) by its July 1, 2019, effective date, codified at 39-71-319, MCA. Private employers are a necessary and valued partner in providing high-quality work-based learning opportunities for students in Montana. The rules provide the parameters of the program, the application process for reimbursement of workers' compensation premium payments for students employed in high-quality work-based learning opportunities, components necessary to determine premium payments, and the attributes of high-quality work-based learning opportunities.
opportunities. The department believes that the proposed rules are appropriate and reasonable in light of the statutory requirements of 39-71-319, MCA.

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

**NEW RULE I  DEFINITIONS** For the purposes of this subchapter, the following definitions apply:

1. "Declaration" means a sworn statement by the employer on the application for reimbursement that the requested reimbursement is only for the workers' compensation premiums paid for a student employed in a qualified high-quality work-based learning opportunity.

2. "Department" means the Department of Labor and Industry.

3. "Employer" means a profit or non-profit business entity that hires a student pursuant to a learning partnership agreement.

4. "Employment" means a student's term-limited, paid, on-the-job instruction in a high-quality work-based learning opportunity pursuant to a learning partnership agreement for academic credit.

5. "Enrolled" means a student has successfully completed a qualified high-quality work-based learning opportunity.

6. "Learning partnership agreement" means an agreement setting forth expectations and commitments for the student's employment in a high-quality work-based learning opportunity. Each agreement must include:
   a. a description of classroom and on-the-job instruction, including two hours of safety instruction;
   b. the days and hours of employment;
   c. the wage that the student will be paid;
   d. the criteria for determining how the high-quality work-based learning opportunity and the student's skill development will be evaluated;
   e. the criteria for earning academic credit;
   f. the number of credits to be earned; and
   g. signatures by the school or other educational provider, the employer, the participating student, and the student's parents if the student is a minor.

7. "Notice of eligibility" means an e-mail sent to the employer by the department after the school, or other educational provider, completes registration at the end of a semester. The notice of eligibility notifies the employer that they can submit an application for reimbursement. The notice of eligibility is not a guarantee of reimbursement.

8. "Portal" means a department-created online database for a school, or other educational provider, to register information relating to high-quality work-based learning programs and for employers to apply for reimbursement of workers' compensation premiums paid on behalf of a student.

9. "Qualified high-quality work-based learning opportunity" means a successfully completed high-quality work-based learning opportunity. The school's registration of the employer in the department's portal confers qualification on the high-quality work-based learning opportunity.

10. "Safety instruction" means learning activities, as generally described in ARM 24.30.2521, which teach about safety issues pertaining to the specific high-quality work-based learning opportunity.  

quality work-based learning opportunity. The methods, materials, and resources should be standard for the industry of the employer.

(11) "Safety training program" means the process which provides employees with knowledge and skills to perform work in a way that is safe for the individual employee and their co-workers as generally described in ARM 24.30.2521. It includes instructions and guidelines to identify hazards, report them, and deal with incidents.

(12) "Student" means an individual enrolled in a high-quality work-based learning opportunity through a secondary school or equivalent educational provider.

(13) "Term-limited educational program" means a semester-long high-quality work-based learning opportunity.

(14) "Workers' compensation premium" means the premiums that the employer pays for each student's workers' compensation coverage while the student is employed in a high-quality work-based learning opportunity.

AUTH: 39-71-319, MCA
IMP: 39-71-319, MCA

NEW RULE II  ATTRIBUTES OF A HIGH-QUALITY WORK-BASED LEARNING OPPORTUNITY  (1) A high-quality work-based learning opportunity features a partnership between employers and schools or other educational providers to provide students with structured learning both in the classroom and at the employer's job site. It must include the following:

(a) learning partnership agreement;
(b) paid wages;
(c) at the start of the student's employment, a minimum of two hours of safety instruction through a safety training program that is specific to the student's employment;
(d) compliance with all federal, state, and local laws and regulations relating to the student's employment; and
(e) academic credit.

AUTH: 39-71-319, MCA
IMP: 39-71-319, MCA

NEW RULE III  GENERAL PROVISIONS RELATING TO REIMBURSEMENT  (1) The employer that is seeking reimbursement must pay the student's workers' compensation premiums "up front" and then seek reimbursement from the department for eligible expenses after the high-quality work-based learning opportunity is qualified.

(2) Reimbursement is limited to the employer's workers' compensation premiums for a student's completion of a qualified high-quality work-based learning opportunity. If the employer does not receive a notice of eligibility from the department, an employer is not eligible to apply for reimbursement.

(3) Reimbursement is not guaranteed. Reimbursement is subject to available funds and will be paid on a first-come, first-served basis as determined by the date of the application submitted on the department's portal.

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NEW RULE IV  REGISTRATION  (1) For an employer to be eligible for reimbursement, a school or other educational provider must register the employer as an eligible high-quality work-based learning provider for that school in the department's portal within 30 days of the end of each semester. The following information is required:
   (a) the name and address of the employer, including the employer's e-mail address;
   (b) the dates of the term-limited educational program;
   (c) the course code and the number of students in each course code;
   (d) the total number of on-the-job instruction hours; and
   (e) the student's wages per hour.
(2) The school's registration of the employer is not a guarantee of reimbursement. Reimbursement is contingent upon department review and approval of reimbursement.

NEW RULE V  REIMBURSEMENT APPLICATION PROCESS  (1) After the school registers an employer in the department's portal, the department will send a notice of eligibility to each registered employer.
(2) Within 45 days of the date of the department's notice of eligibility, the employer shall complete an application electronically through the department's portal and provide all required documents. The application must include:
   (a) proof of payment from the employer's workers' compensation provider of the workers' compensation premiums paid for each student in each qualified high-quality work-based learning opportunity and that each student's payroll was included. If the business entity is self-insured, the employer must submit an affidavit or declaration attesting to the premiums;
   (b) the amount of reimbursement that the employer seeks, with a calculation of the premium paid per student;
   (c) that the employer adheres to safe working conditions and that the first two hours, at a minimum, of the student's employment were devoted to safety instruction through a safety training program that is specific to the student's employment;
   (d) that the amount sought is only for the workers' compensation premiums for a student employed in a qualified high-quality work-based learning opportunity;
   (e) that the employer complied with all federal, state, and local laws and regulations regarding student employment;
   (f) any other documents that the department requires to process payment; and
   (g) a declaration pursuant to 1-6-104, MCA, that the information is true and correct to the best of the employer's knowledge.
(3) An employer may amend a pending application for reimbursement by submitting an amended application or supporting documents on the department's portal. An amended application is deemed submitted on the date of the amendment.

(4) The department will verify the information submitted to ensure that it is complete and accurate.

AUTH: 39-71-319, MCA
IMP: 39-71-319, MCA

NEW RULE VI EVALUATION OF APPLICATION AND LIMITATIONS
(1) The department shall evaluate each application and make a determination as to:
   (a) whether the application is complete and accurate; and
   (b) the amount of the reimbursement.

(2) If the department is satisfied that an employer's application is complete and accurate, the department will issue the reimbursement subject to funding.

(3) Because funding is limited, consistent with the department's intent to encourage as many different employers as possible to hire students in high-quality work-based learning opportunities, the department reserves the right to defer reimbursement for multiple students employed by a single employer. In the event of deferral, the department will notify the employer in writing. Applications for which review has been deferred will be considered and evaluated on a quarterly basis as funding allows.

(4) If the department denies an application for reimbursement, the employer may submit an amended application.

AUTH: 39-71-319, MCA
IMP: 39-71-319, MCA

NEW RULE VII APPEALS
(1) An employer has the right to appeal when the department:
   (a) decides not to reimburse an employer for workers' compensation premiums; or
   (b) awards less than the reimbursement requested.

(2) If an employer disagrees with the department's decision to not approve an application, or to approve less money than was requested, the employer may:
   (a) request an administrative review within 30 calendar days of the date of the notice of the department's decision regarding the application by submitting a written request for an administrative review to the department: Department of Labor and Industry, Work-Based Learning Program, P.O. Box 1728, Helena, MT 59624-1728, or electronically to WBLinfo@mt.gov.

   (b) If the employer is dissatisfied with the decision from the administrative review, the employer may submit a written request for a contested case proceeding, pursuant to Title 2, chapter 4, MCA, within 20 calendar days of the date of the notice of final decision of the department, which may be the result of an administrative review requested pursuant to (a).
(3) The employer bears the burden of demonstrating that the action by the department constitutes an abuse of discretion.

AUTH: 39-71-319, MCA
IMP: 39-71-319, MCA

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Nisan Burbridge, Department of Labor and Industry, P.O. Box 1728, Helena, Montana, 59624-1728; telephone (406) 444-3079; or e-mail nburbridge@mt.gov, and must be received no later than 5:00 p.m., December 4, 2020.

6. 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.

7. 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.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by e-mail on October 23, 2020.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rules will not significantly and directly impact small businesses. To the extent that there is any impact, it is positive. These rules provide a process for employers to apply for reimbursement of workers' compensation premiums incurred due to hiring students in paid work-based learning opportunities. The intent of the rules is to encourage employers to hire more students to learn marketable skills in an on-the-job work experience by offsetting increased costs from providing workers' compensation coverage.

10. The Office of Administrative Hearings, Department of Labor and Industry, has been designated to preside over and conduct this hearing.

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