

Dear Senators PATRICK, Souza, Ward-Engelking, and  
Representatives HOLTZCLAW, Syme, Chew:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the  
Department of Labor:  
IDAPA 09.00.00 - Notice of Omnibus Rulemaking - Proposed Rule (Docket No. 09-0000-2100).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the  
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research  
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative  
Services. The final date to call a meeting on the enclosed rules is no later than 11/15/2021. If a meeting is  
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis  
from Legislative Services. The final date to hold a meeting on the enclosed rules is 12/13/2021.

The germane joint subcommittee may request a statement of economic impact with respect to a  
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,  
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has  
been held.

To notify Research and Legislation, call 334-4854, or send a written request to the address on the  
memorandum attached below.



**Terri Kondeff**  
Director

# Legislative Services Office

## Idaho State Legislature

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*Serving Idaho's Citizen Legislature*

### MEMORANDUM

**TO:** Rules Review Subcommittee of the Senate Commerce & Human Resources Committee and the House Commerce & Human Resources Committee  
**FROM:** Legislative Drafting Attorney - Matt Drake  
**DATE:** October 28, 2021  
**SUBJECT:** Department of Labor

IDAPA 09.00.00 - Notice of Omnibus Rulemaking - Proposed Rule (Docket No. 09-0000-2100)

#### **Summary and Stated Reasons for the Rule**

The Department submits notice of proposed rulemaking via Docket No. 09-0000-2100. The Department states that it is republishing previously existing rules that were submitted to and reviewed by the Legislature.

#### **Negotiated Rulemaking / Fiscal Impact**

Negotiated rulemaking was not conducted by the Department. There is no anticipated fiscal impact with this rulemaking.

#### **Statutory Authority**

The rulemaking appears to be authorized pursuant to sections 45-616 and 72-1333, Idaho Code.

cc: Department of Labor  
Patricia Fitzpatrick

#### **\*\*\* PLEASE NOTE \*\*\***

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

## IDAPA 09 – IDAHO DEPARTMENT OF LABOR

DOCKET NO. 09-0000-2100

### NOTICE OF OMNIBUS RULEMAKING – PROPOSED RULEMAKING

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 45-616 and 72-1333(2), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This proposed rulemaking publishes the following rule chapters previously submitted to and reviewed by the Idaho Legislature under IDAPA 09, rules of the Idaho Department of Labor:

#### **IDAPA 09**

- 09.01.01, *Rules of Administrative Procedure of the Department of Labor*;
- 09.01.08, *Rules on Disclosure of Employment Security Information*;
- 09.01.30, *Unemployment Insurance Benefits Administration Rules*;
- 09.01.35, *Unemployment Insurance Tax Administration Rules*;
- 09.02.01, *Rules of the Disability Determinations Service*; and
- 09.05.03, *Rules for Determining Bargaining Representatives*.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2022 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules being reauthorized by this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

Negotiated rulemaking conducted outside of this omnibus rulemaking under Docket No. 09-0130-2101 published in the June 2, 2021 Idaho Administrative Bulletin, [Vol. 21-6, page 48](#), and affects the following rule chapter included in this proposed rulemaking: IDAPA 09.01.30.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the proposed rules attached hereto.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rules, call 208-332-3570 and ask for:

- Georgia Smith – Administrator (x2102) – IDAPA 09.01.08; IDAPA 09.05.03
- Amy Hohnstein – Bureau Chief (x3330) – IDAPA 09.01.01
- Joshua McKenna – Bureau Chief (x3919) – IDAPA 09.01.30
- JoAnna Henry – Operations Manager (x3146) – IDAPA 09.01.35
- Laura Croft – Administrative Support Manager (x2343) – IDAPA 09.02.01

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

DATED this October 20, 2021.

Jani Revier, Director  
Idaho Department of Labor  
317 W. Main Street  
Boise, ID 83735  
208-332-3570 ext. 3110 (Tel)  
208-334-6430 (fax)

# IDAPA 09 – DEPARTMENT OF LABOR

## 09.01.01 – RULES OF ADMINISTRATIVE PROCEDURE OF THE DEPARTMENT OF LABOR

### 000. LEGAL AUTHORITY.

These rules are promulgated under Sections 45-616 and 72-1333(2), Idaho Code. ( )

### 001. SCOPE.

These rules govern all procedures for rulemaking, petitions for declaratory rulings, and determinations and appeals pursuant to the Employment Security Law, Title 72, Chapter 13, Idaho Code, and the Claims for Wages Act, Title 45, Chapter 6, Idaho Code, and for other programs administered by the Department unless otherwise specified by law. ( )

### 002. (RESERVED)

### 003. ADMINISTRATIVE APPEALS.

Administrative appeals from determinations under the Employment Security Law and the Claims for Wages Act may be taken as provided in these rules and applicable provisions of the Employment Security Law and the Claims for Wages Act. ( )

### 004. PAYMENTS TO THE DEPARTMENT.

Any payment tendered to the Department will be for collection only and will not constitute payment of any amount due until the payment clears the appropriate financial institution. Should the Department incur any additional expense in the payment collection, the expense will be paid by the person who tenders said payment to the Department. ( )

### 005. – 009. (RESERVED)

### 010. DEFINITIONS.

**01. Appeals Examiner.** A Department hearing officer designated to hear administrative appeals pursuant to the Employment Security Law and the Claims for Wages Act. ( )

**02. Claims for Wages Act.** The Claims for Wages Act codified at Title 45, Chapter 6, Idaho Code. ( )

**03. Department.** The Idaho Department of Labor. ( )

**04. Determination.** Unless the context clearly suggests otherwise, reference to a determination in these rules includes a determination, redetermination, or a revised determination. ( )

**05. Employment Security Law.** The Employment Security Law codified at Title 72, Chapter 13, Idaho Code. ( )

### 011. – 014. (RESERVED)

### 015. EXEMPTION FROM ATTORNEY GENERAL ADMINISTRATIVE PROCEDURE RULES FOR CONTESTED CASES.

Pursuant to Section 67-5206(5), Idaho Code, the procedures contained in Subchapter B, “Contested Cases,” of the Idaho Rules of Administrative Procedure of the Attorney General, IDAPA 04.11.01.100 through 04.11.01.799, do not apply to appeals within the Department. All appeals within the Department are governed solely by the provisions of the Employment Security Law, the Claims for Wages Act, these rules, and by the applicable federal law governing programs administered by the Department. ( )

### 016. REASONS FOR EXEMPTION FROM ATTORNEY GENERAL'S ADMINISTRATIVE PROCEDURE RULES.

**01. Unemployment Insurance Benefits and Tax Contribution Proceedings.** Sections 72-1361 and 72-1368, Idaho Code, provide that all proceedings to determine the rights to unemployment insurance benefits and tax contribution coverage are exempt from the contested case and judicial review provisions of the Idaho Administrative Procedure Act. Appeals of complaint determinations and other decisions arising within the complaint

system or other programs administered by the Department must be determined by the requirements of applicable federal law. Procedures for administrative proceedings and appeals are provided for in the Employment Security Law and these rules. All procedures affecting the rights to benefits and unemployment insurance coverage must be determined solely by the requirements of the Employment Security Law. Such proceedings must be speedy and simple as required by the Federal Unemployment Tax Act and the Social Security Act. The Department determines that it can more adequately meet these requirements through promulgating its own rules rather than relying upon the rules applicable to other state agencies. ( )

**02. Claims for Wages Proceedings.** All proceedings to determine claims for wages are exempt from the contested case provisions of the Idaho Administrative Procedure Act pursuant to Section 45-617(2), Idaho Code. Procedures for administrative proceedings and appeals are provided for in the Claims for Wages Act and these rules. ( )

**017. (RESERVED)**

**018. DECLARATORY RULING PROCEDURES.**

Form and Contents of Petitions for Declaratory Rulings on Applicability of Statutes or Rules. Any person petitioning for a declaratory ruling on the applicability of a statute or Department rule must comply with this rule. ( )

**01. Form of Petition.** The petition must: identify the petitioner and state the petitioner's interest in the matter; state the declaratory ruling that the petitioner seeks; and indicate the statute, or rule, and the factual allegations upon which the petitioner relies to support the petition. ( )

**02. Legal Assertions.** Citations of cases and/or statutory provisions may accompany the legal assertions in a petition for a declaratory ruling. ( )

**03. Filing Petition.** A petition for a declaratory ruling on applicability of statutes or rules must be filed with the Director of the Department at 317 Main Street, Boise, Idaho 83735. ( )

**04. Disposition of Petitions for Declaratory Rulings.** When a petition is received in the form and content required by these rules, the Director or the Director's designee will review the petition contents and request additional information from the petitioner, if necessary, and thereafter rule on the petition and notify the petitioner and any other interested parties in writing of the ruling. ( )

**019. – 024. (RESERVED)**

**025. WAGE CLAIMS PROCEDURES.**

Administrative procedures for wage claims filed with the Department pursuant to the Claims for Wages Act are governed by these rules and Section 45-617, Idaho Code. ( )

**026. DISMISSAL OF WAGE CLAIMS FOR LACK OF PROSECUTION.**

Wage claimants have a responsibility to seek prompt adjudication of their claims. The Department may dismiss, without prejudice, wage claims when claimants fail to respond within thirty (30) days to written notice from the Department that additional action is required on their part to prosecute their claim. The thirty (30) day period for a response begins the date the notice is mailed to the wage claimant's last known address. Mailed responses are deemed received the date they are postmarked. A wage claim dismissed for lack of prosecution may be refiled with the Department subject to limitations of Sections 45-614 and 45-617(1), Idaho Code. ( )

**027. WAGE CLAIM AND EMPLOYMENT SECURITY LAW DETERMINATIONS.**

**01. Determinations and Time for Filing Appeals.** Department determinations under the Claims for Wages Act and Employment Security Law must be in writing and contain provisions advising the interested parties of their right to appeal the determination within fourteen (14) days from the date of mailing, or the date of electronic transmission to an electronic-mail address approved by the Department, in accordance with Sections 45-617(5), 72-1361 and 72-1368(5), Idaho Code, and must contain and clearly identify the mailing address, fax number and electronic address for filing an appeal. The date of mailing or service indicated on the determination shall be deemed the date of service of the determination. A determination is final unless, within fourteen (14) days after notice, as

provided in Sections 45-617(5) and 72-1368(5), Idaho Code, an appeal is filed by an interested party with the Department in accordance with these rules. If an appeal from a wage claim determination is not timely filed, the amount awarded by a final determination will be immediately due and payable to the Department. ( )

**02. Appeals Heard By Appeals Examiners.** Appeals from wage claim and Employment Security Law determinations will be heard by an appeals examiner in accordance with the Claims for Wages Act, the Employment Security Law, and these rules. ( )

**03. Computation of Time.** In computing any time period prescribed or allowed by the Employment Security Law or the Claims for Wages Act, the day of the act, event, or default is not to be included. Saturdays, Sundays, and holidays will be counted during the period, except, if the last day of the period is a Saturday, Sunday, or legal holiday, the period extends to the next business day following the Saturday, Sunday, or legal holiday. ( )

**028. – 034. (RESERVED)**

**035. APPEALS TO APPEALS EXAMINER – FORM AND MANNER OF FILING OF NOTICES OF APPEAL.**

**01. Form of Notices of Appeal.** Any appeal taken to an appeals examiner pursuant to the Employment Security Law and the Claims for Wages Act must be in writing, signed by an interested party, the appellants or representative, and contain words that, by fair interpretation, request the appeal process for a specific determination or other decision of the Department. ( )

**02. Filing of Notices of Appeal.** To appeal a determination or other decision of the Department, interested parties must follow these rules and the instructions on the determination or other decision being appealed. If an appeal is delivered personally, the personal delivery date will be noted on the appeal and deemed the date of filing. A faxed or electronically transmitted appeal will be deemed filed on the date received by the Department (mountain time) or, if received on a weekend or holiday, the next business day. If mailed, the appeal will be deemed filed on the date of mailing as determined by the postmark on the envelope containing the appeal, unless a party establishes by a preponderance of the evidence that but for error by the U.S. Postal Service, the envelope would have been postmarked within the period for timely appeal. If such a postal error is established, the appeal will be deemed to be timely filed. Ref. Section 72-1368(6), and Section 45-617, Idaho Code. ( )

**036. DATE OF SERVICE OF DETERMINATIONS.**

The date indicated on determinations and decisions as the “Date of Service” or “Date of Mailing” will be presumed to be the date the document was deposited in the United States mail, or the date the document was electronically transmitted to an electronic-mail address approved by the Department pursuant to Section 72-1368(5), Idaho Code, unless shown otherwise by a preponderance of competent evidence. ( )

**037. EFFECT OF DELAY OR ERROR OF POSTAL SERVICE OR DEPARTMENT.**

**01. Department Determinations.** If a party establishes by a preponderance of the evidence that because of delay or error by the U.S. Postal Service, or because of error on the part of the Department, a determination was not delivered to the party's last known address, or transmitted electronically to the party's electronic-mail address approved by the Department, within fourteen (14) days of the date of mailing or service indicated on the determination, the period for filing a timely appeal extends to fourteen (14) days from the date of actual notice. ( )

**02. Decisions of the Appeals Examiner.** If a party establishes by a preponderance of the evidence that, because of delay or error by the U.S. Postal Service, or because of error on the part of the Department, a decision by an appeals examiner was not delivered to the party's last known address, or transmitted electronically to the party's electronic-mail address approved by the Department, within the time periods prescribed by the Employment Security Law or the Claims for Wages Act for filing an application for rehearing or an appeal to the Industrial Commission, as the case may be, then: ( )

**a.** For an application for rehearing that must be filed within ten (10) days of notice of service of a decision, the period for filing a timely application for rehearing extends to ten (10) days from the date of actual

notice; and ( )

**b.** For an appeal to the Industrial Commission that must be filed within fourteen (14) days of notice of service of a decision, the period for filing a timely appeal extends fourteen (14) days from the date of actual notice. Ref. Section 72-1368 (5) and (6) and Section 45-617(7), Idaho Code. ( )

**038. DISMISSAL IF FILING IS LATE.**

Where it appears any appeal (request for hearing) to the appeals examiner, or claim, or any other request or application, was not filed within the time period prescribed for filing, it will be dismissed on such grounds; provided, however, before or after such dismissal, the adversely affected interested party will be notified and given an opportunity to show that such appeal, claim for review, petition, or other request was timely. If it is found that such appeal, claim for review, petition, or other request or application was timely, the matter will be decided on the merits. Copies of a decision under this section will either be given, mailed, or electronically transmitted to an electronic-mail address approved by the Department pursuant to Section 72-1368(5), Idaho Code, to all interested parties, together with a clear statement of right of appeal or review. Ref. Section 72-1368 and Section 45-617, Idaho Code. ( )

**039. – 044. (RESERVED)**

**045. CONDUCT OF APPEALS HEARING.**

Upon request for appeal, a hearing before an appeals examiner will be set. Written notice of the time and place of the hearing will be mailed or electronically transmitted to each interested party not less than seven (7) days prior to the hearing date. ( )

**01. Telephone Hearings.** Hearings will be held by telephone unless, at the sole discretion of the appeals examiner, a personal hearing should be set. In deciding the manner in which to conduct the hearing, the appeals examiner will consider factors, including but not limited to the desires of the parties, possible delay and expense, the burden of proof, the complexity of the issues, and the number and location of witnesses. ( )

**02. Continuance.** The appeals examiner may postpone or continue a hearing for good cause on the examiner's own motion or that of any party, before a hearing is concluded. The appeals examiner may dismiss an appeal for good cause, such as abandonment of the appeal. ( )

**03. Rehearing.** An application for rehearing will be in writing and filed in person or postmarked within ten (10) days after the appeals examiner's decision is served. ( )

**04. No Appearance Hearings.** If no party appears to present additional evidence, a decision may be based on the existing record. For this purpose, the existing record will consist of documents maintained by the Department in the ordinary course of adjudicating the issues in the case, copies of which are provided to the parties with the notice of hearing. ( )

**05. Exhibits and Recordings.** Hearing exhibits and recordings may be destroyed, reused, or otherwise disposed of after the expiration of the time period for appeal from the decisions of the appeals examiner. ( )

**06. Subpoenas.** After determining a subpoena of a witness or records is necessary and reasonable, the appeals examiner will issue the subpoena, which may be served by mail or in person. ( )

**07. Failure to Respond to Subpoena.** If a person fails to respond to a subpoena issued by mail, the appeals examiner will proceed with the scheduled hearing and determine, after hearing available testimony, whether the subpoena is still necessary and reasonable. If so, the hearing will be continued and a second subpoena will be issued and personally served. ( )

**08. Witness Fees.** Individuals who attend hearings before the appeals examiner as subpoenaed witnesses, not parties, are entitled to receive a fee of seven dollars and fifty cents (\$7.50) for each day or portion thereof for attendance. In no case will a witness be paid more than seven dollars and fifty cents (\$7.50) for any one (1) day. Subpoenaed witnesses are entitled to mileage expense at the current allowable mileage reimbursement rate as determined by the Idaho State Board of Examiners. For appeals under the Employment Security Law, such witness fees and mileage expenses will be paid from the Employment Security Administration fund. Under no circumstances



will interested parties to a hearing be granted witness fees or mileage expenses. Mileage fees are not allowed for vicinity travel. ( )

**09. Undecided Issues.** When it is apparent that there is no prior ruling on an issue that must be decided under the Act, the appeals examiner may hear and decide the issue. ( )

**10. Type of Hearing.** The proceeding before an appeals examiner will be a hearing “de novo” or original hearing and not solely a review proceeding. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. ( )

**11. Role of Appeals Examiner.** The appeals examiner will function as a fact finder and not solely as a judge. The appeals examiner will have the responsibility of developing all the evidence that is reasonably available. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. ( )

**12. Order of Witnesses.** The appeals examiner, in the exercise of reasonable discretion, will direct the order of witnesses and develop evidence in a logical and orderly manner to move the hearing along as expeditiously as possible. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. ( )

**13. Evidence.** The appeals examiner may exclude evidence that is irrelevant, unduly repetitious, or excludable on constitutional or statutory grounds, or on the basis of any evidentiary privilege provided by statute or recognized in the courts of this state. All other evidence may be admitted if it is of a type commonly relied upon by prudent persons in the conduct of their affairs. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. ( )

**14. Disruptive Individuals.** The appeals examiner may exclude disruptive individuals from the hearing or may postpone the hearing if the integrity of the proceedings is being compromised. If an interested party is excluded, they will be provided a copy of the recording of the proceedings and given an opportunity to submit written evidence and argument prior to the issuance of the decision and the opposing party will be given an opportunity to respond. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. ( )

**15. Challenge of General Knowledge.** If judicially cognizable facts or general, technical, or scientific facts within the appeals examiner's specialized knowledge are used in the decision, the parties will be given an opportunity to challenge them at the time of the hearing, or at the time of the issuance of the decision. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. ( )

**16. Closing Arguments.** Closing arguments will be limited to five (5) minutes for each party unless the appeals examiner grants an exception. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. ( )

**046. COMMUNICATION WITH APPEALS STAFF.**

No party involved in an appeal may communicate, either directly or indirectly, with appeals examiners, the Chief of the Appeals Bureau, or clerical staff of the Appeals Bureau, regarding any issue of fact or law relevant to an appeal, unless all parties involved have been provided notice and an opportunity to participate in such communication. No person acting on behalf of any party, including the Idaho Department of Labor, may attempt to influence the disposition of an appeal through such communications. No appeals examiner may knowingly cause a communication prohibited by this section to be made. ( )

**01. Prohibition of Ex Parte Contacts.** The prohibition on ex parte contacts contained in this rule applies from the time an appeal is filed pursuant to IDAPA 09.01.01.025 or IDAPA 09.01.01.027 until the appeal becomes final and conclusive pursuant to Sections 72-1368 and 45-617, Idaho Code. ( )

**02. Issues of Fact.** As used in this rule, the term “issue of fact or law relevant to an appeal” includes any matter relating to the merits of an appeal but does not include questions of appeals procedure or case status inquiries. Parties may not direct questions of appeals procedure or case status inquiries to the appeals examiner assigned to their case but rather to other appeals examiners, the Chief of the Appeals Bureau (unless he or she is functioning as the appeals examiner in the case), or to clerical staff of the Appeals Bureau. ( )

**03. Reporting Prohibited Contacts.** An appeals examiner or other Appeals Bureau employee who receives a communication prohibited by this rule must place in the record of the case all such written communications or a memorandum stating the substance of all such oral communications. The Appeals Bureau must send a full copy

of the communication to other interested parties to the appeal and allow an appropriate time for the parties to respond. ( )

**047. – 059. (RESERVED)**

**060. INDUSTRIAL COMMISSION REVIEW OF APPEALS EXAMINER DECISIONS.**

**01. Claim for Review Under the Employment Security Law.** A claim for review of the appeals examiner's decision, as provided in Section 72-1368, Idaho Code, must be made in writing, signed by the person claiming the review or by his attorney or agent, and filed with the Idaho Industrial Commission in accordance with rules adopted by the Commission. Ref. Sec. 72-1368(7) Idaho Code. ( )

**02. Transcripts.** Upon receipt of a notice that a claim for review has been filed with the Industrial Commission, a true and correct transcript of the recorded proceedings must be prepared if ordered by the Commission. Copies of transcripts or recording of the proceedings, together with exhibits received in the case, must be transmitted by the Department to the Commission and provided to all interested parties without charge. ( )

**061. – 064. (RESERVED)**

**065. JUDICIAL REVIEW OF WAGE CLAIM DECISIONS.**

A claimant or employer aggrieved by a final decision of the appeals examiner in a wage claim proceeding may seek judicial review of the decision pursuant to Title 67, Chapter 52, Idaho Code, and Section 45-619, Idaho Code, by timely filing a petition for judicial review in a court of competent jurisdiction. The Department is not an aggrieved party for purposes of any judicial review proceeding and will not be made a party in any petition for judicial review. The proper parties in a petition for judicial review are the claimant and the employer. ( )

**066. – 999. (RESERVED)**

## 09.01.08 – RULES ON DISCLOSURE OF EMPLOYMENT SECURITY INFORMATION

### 000. LEGAL AUTHORITY.

These rules are promulgated under Sections 72-1333 and 72-1342, Idaho Code. ( )

### 001. SCOPE.

These rules address disclosure by the Department of employment security information, as defined in Section 74-106(7), Idaho Code. These rules comply with the requirements of 20 CFR Part 603, “Confidentiality and Disclosure of State Unemployment Compensation Information,” and the Idaho Public Records Act. ( )

### 002. (RESERVED)

### 003. ADMINISTRATIVE APPEALS.

There is no administrative appeal under this chapter. Appeals of denials of requests for Department records are governed by the provisions of the Idaho Public Records Act. ( )

### 004. -- 009. (RESERVED)

### 010. DEFINITIONS.

**01. Agent.** One who acts for or in the place of an individual or employer by the authority of that individual or employer. ( )

**02. Employment Security Law.** The act codified at Title 72, Chapter 13, Idaho Code. ( )

**03. Payment in Advance.** Full payment of all costs before or at the time that employment security information is disclosed to a recipient. ( )

**04. Public Official.** In accordance with Section 72-1342, Idaho Code, a “public official” is an official, elected official, or a contractor thereof in or for a federal, state, or local government, agency, or public entity within the executive branch of federal, state, or local government, who has responsibility for administering or enforcing a law, including research related to administration of a law. ( )

**05. Public Records Act.** The act codified at Title 74, Chapter 1, Idaho Code. ( )

### 011. ACCESS BY PERSONS TO INFORMATION PERTAINING TO THEM.

**01. Individual or Employer.** Individuals or employers may access employment security information pertaining to them, subject to the procedures and restrictions contained in the Idaho Public Records Act and reimbursement provisions in Section 020 of these rules. Unless the disclosure is for the purposes of the Employment Security Law, the Department will not comply with requests for disclosure of records to an individual or employer on an ongoing basis, and only existing records in the Department’s custody as of the date of receipt of the request will be disclosed, not records that may be created in the future. ( )

**02. Attorney.** An attorney representing a party for the purposes of the Employment Security Law need only submit a letter on letterhead to the Department confirming the attorney’s representation of the party, for an Employment Security Law purpose, to access any employment security information that would be available to the attorney’s client. If the attorney is not representing the client for the purposes of the Employment Security Law, the attorney must provide an informed consent release, in the same manner and with the same restrictions as an agent in Subsection 011.04 of these rules, in order to access any employment security information that would be available to the client. ( )

**03. Elected Official.** An elected official performing constituent services who requests employment security information on behalf of an individual or employer may access any employment security information related to the inquiry and available to the constituent if the elected official presents reasonable evidence the constituent authorized the disclosure. Such reasonable evidence may include a letter or written record of a telephone request for assistance from the constituent. ( )

**04. Agent.** In order to access any employment security information available to the individual or employer, an agent of an individual or employer must provide an informed consent release that meets the requirements of Subsection 013.01 of these rules. If the disclosure is for the purposes of Employment Security Law and it is impossible or impracticable to obtain an informed consent release, the agent must provide clear and convincing evidence, as determined by the Department, that the agent is authorized to act on behalf of the individual

or employer in order to access any employment security information available to the individual or employer. Unless the disclosure is for the purposes of the Employment Security Law, the Department will not comply with requests for disclosure of records to an agent on an ongoing basis, and only existing records in the Department's custody as of the date of receipt of the request will be disclosed pursuant to the informed consent release, not records that may be created in the future. ( )

**012. DISCLOSURE TO PUBLIC OFFICIALS.**

Employment security information may be disclosed by the director or the director's authorized representative to the following public officials or to an agent or contractor of the following public officials, for use in the performance of official duties: ( )

**01. Required by Federal Law.** Any public agency to whom the Department is required by federal law to disclose information, under the terms and restrictions required by federal law; ( )

**02. Reciprocal Disclosures.** Any public agency where reciprocal disclosures from such agency to the Department will reasonably assist in the collection of contributions and payments in lieu of contributions. ( )

**03. Benefit to Department.** Any public agency to whom disclosure of Department information would be consistent with the mission of the Department or of benefit to the Department, as determined by the director. ( )

**04. Written Agreement.** Any release of information to public officials under Subsections 012.02 and 012.03 of these rules must be pursuant to a written agreement signed by the requesting agency director or their authorized representative and the director of the Department. If an agent or contractor is to obtain or access information on behalf of a requesting agency, the requesting agency director or the director's authorized representative must sign the agreement. The requesting agency will be responsible for ensuring the agent or contractor complies with all security requirements of the agreement. ( )

**05. Terms and Conditions of Written Agreement.** The interagency agreement must contain the following provisions: ( )

**a.** A description of the specific information to be furnished by the Department and the purpose(s) for which the information is sought and will be used; ( )

**b.** A statement that those who request or receive information under the agreement will be limited to those individuals, identified by name or job title, or both, with a need to access for purpose(s) specified in the agreement; ( )

**c.** Methods and timing, if the disclosure is to be made more than once, including the format to be used; ( )

**d.** Provisions for timely payment of the Department's billed costs as required by Subsection 020.02 of these rules, including the Department's costs of performing on-site inspections to ensure compliance with State and Federal law and agreement requirements; ( )

**e.** Provisions for safeguarding the information disclosed, including the following requirements: ( )

**i.** Recipient will use the information only for purposes authorized by law and specified in the agreement; ( )

**ii.** Recipient will store the information in a place physically secure from access by unauthorized persons; ( )

**iii.** Recipient will store and process the information maintained in electronic format in a way that unauthorized persons cannot obtain the information by any means; ( )

iv. Recipient will undertake precautions to ensure only authorized personnel have access to the information stored in computer systems; ( )

v. Recipient will instruct and have all personnel with access to the information sign an acknowledgment they will adhere to the agreement's confidentiality requirements; understand the civil and criminal penalties in Sections 72-1372 and 72-1374, Idaho Code for unauthorized disclosure of information; and will fully and promptly report to the Department any breach of the confidentiality requirements; ( )

vi. Except for any information possessed by any court, Recipient will dispose of the information and any copies made by the requesting agency or its agent or contractor after the purpose of the disclosure has been served, and will not retain the information with personal identifiers for any longer period of time than the Department deems appropriate; and ( )

vii. Recipient will redisclose the information only as provided in the agreement or as required by State or Federal law. ( )

f. Provisions for on-site inspections of the requesting agency and/or its agent or contractor by the Department to ensure compliance with State and Federal law and the requirements of the agreement; ( )

g. Provisions that stipulate the Department determines the requesting agency or its agent or contractor is not adhering to the requirements of the agreement, including timely payment of the Department's billed costs, any and all further disclosures will immediately be suspended until the Department is satisfied corrective action has been taken and there will be no further breach; ( )

h. Provisions for terminating this agreement if, after a breach of the agreement, prompt and satisfactory corrective action is not taken, and for the immediate surrender to the Department of all employment security information, including copies in any form, obtained under the agreement by the requesting agency and/or its agent or contractor; and ( )

i. Provisions for the Department to take any remedial action permitted under State or Federal law to enforce the agreement, including seeking damages, penalties, restitution, attorneys fees and costs incurred by the Department for pursuit of any breaches of the agreement and required enforcement. ( )

**06. Exception for Certain Federal Agencies.** These requirements do not apply to disclosures of employment security information to a Federal agency which the U.S. Department of Labor has determined, by notice in the Federal Register, to have in place safeguards adequate to satisfy the confidentiality requirement of Section 303(a)(1) of the Social Security Act, and an appropriate method of paying or reimbursing the Department for any costs involved in such disclosures. ( )

**07. Safety Concerns.** Employment security information may be disclosed to a public official contacted for assistance when the safety of Department staff or property may be at risk. Such disclosures are considered necessary for the proper administration of programs under the Employment Security Law and may be made without a written agreement or a subpoena from the public official. ( )

**013. DISCLOSURE TO THIRD PARTIES WITH WRITTEN, INFORMED CONSENT.**

A person may agree, through written, informed consent, to allow a third party to obtain employment security information pertaining to the person from the Department, subject to the following terms and conditions: ( )

**01. Informed Consent Release.** ( )

a. An informed consent release must be signed by the person providing informed consent and dated within one (1) year of the date of the request for access to the records. ( )

b. In the document, the person providing informed consent must: ( )

i. Identify the specific records to be disclosed; ( )

- ii. Acknowledge Department files will be accessed to obtain the records; ( )
  - iii. List all third parties authorized to access the person’s information; and ( )
  - iv. Indicate specific purpose(s) of the disclosure and state the records will be used only for the specified purpose(s). If the disclosure is not for purposes of the Employment Security Law, the purpose(s) specified must provide a service or benefit to the person providing informed consent or to administer or evaluate a public program to which informed consent release pertains. ( )
  - c. Unless disclosure is for the purposes of the Employment Security Law, the Department will not comply with disclosure requests to a third party on an ongoing basis. Only existing records in the Department’s custody as of the date of receipt of the request will be disclosed pursuant to the informed consent release, not records that may be created in the future. ( )
- 02. Agreement by Third Party.** Before the Department will disclose employment security information to a third party pursuant to an informed consent release, the third party must sign an agreement containing the following provisions: ( )
- a. A description of the specific information to be furnished by the Department and the purpose(s) for which the information is sought and will be used, as specified in the informed consent release; ( )
  - b. A statement that those who request or receive information under the agreement will be limited to those individuals, identified by name, with a need to access it for the purpose(s) specified in the informed consent release; ( )
  - c. The method for the disclosure, including format; ( )
  - d. Provisions for payment of the Department’s costs of disclosure as required by Subsection 020.02 of these rules, including the Department’s costs of performing audits to ensure compliance with State and Federal law and the requirements of the agreement; ( )
  - e. Provisions for safeguarding the information disclosed, including the following requirements: ( )
    - i. Recipient will use the information only for purposes authorized by law and specified in the informed consent release; ( )
    - ii. Recipient will store the information in a place physically secure from access by unauthorized persons; ( )
    - iii. Recipient will store and process the information maintained in electronic format in such a way unauthorized persons cannot obtain the information by any means; ( )
    - iv. Recipient will undertake precautions to ensure only authorized personnel have access to the information stored in computer systems; ( )
    - v. Recipient will instruct and have all personnel with access to the information sign an acknowledgment that they will adhere to the agreement's confidentiality requirements; understand the civil and criminal penalties in Sections 72-1372 and 72-1374, Idaho Code for unauthorized disclosure of information; and will fully and promptly report to the Department any breach of the confidentiality requirements. ( )
    - vi. Except for any information possessed by any court, Recipient will dispose of the information and any copies made by the requesting agency or its agent or contractor after the purpose of the disclosure has been served, and will not retain the information with personal identifiers for any longer period of time than the Department deems appropriate; and ( )
    - vii. Recipient will redisclose the information only as authorized under informed consent release and for ( )

purpose(s) specified in the release or as required by State or Federal law. ( )

**f.** Provisions for on-site audits of the recipient by the Department as the Department may deem necessary to ensure compliance with State and Federal law and agreement requirements; ( )

**g.** Provisions for the immediate suspension of the agreement if the Department determines that the recipient is not adhering to the requirements of the agreement; ( )

**h.** Provisions for termination of the agreement if, after a breach of the agreement prompt and satisfactory corrective action is not taken, and for immediate surrender to the Department of all employment security information, including copies in any form, obtained under the agreement by the recipient; ( )

**i.** Acknowledgment by recipient the agreement is governed by the laws of the State of Idaho, and civil and criminal penalties in Sections 72-1372 and 72-1374, Idaho Code, apply to any unauthorized disclosure of information no matter where the unauthorized disclosure may occur; and ( )

**j.** Provisions for the Department to take any remedial action permitted under State or Federal law to enforce the agreement, including seeking damages, penalties, restitution, and attorneys fees and costs incurred by the Department for any breaches of the agreement and required enforcement. ( )

**03. Department's Right to Audit.** After a third party receives employment security information pursuant to an informed consent release, the Department may perform an on-site audit of the third party to ensure the information is used for authorized purposes only. ( )

**014. -- 019. (RESERVED)**

**020. COSTS OF DISCLOSURE.**

Unless the disclosure of employment security information is for the purposes of the Employment Security Law, the party requesting the disclosure must reimburse the Department's costs of disclosure, including staff time and processing costs, as follows: ( )

**01. Private Party.** If the requestor is not a public official, reimbursement must be in advance to the Department unless the disclosure involves an incidental amount of staff time and nominal processing costs. ( )

**02. Public Official.** If the requestor is a public official, payment to reimburse the Department may be made in advance or by way of billing invoice, as determined by the director, unless the disclosure involves only an incidental amount of staff time and nominal processing costs or there is a reciprocal cost arrangement with the public official. The Department may enter into a reciprocal cost arrangement with a public official when the relative benefits received by each agency through information sharing are approximately equal. ( )

**021. SUBPOENAS OF EMPLOYMENT SECURITY INFORMATION.**

**01. Subpoena from Public Official.** Employment security information may be supplied to a public official with subpoena authority after the Department receives a subpoena that is reasonable in nature and scope from the public official. This provision does not apply to subpoenas served on behalf of private parties to civil or criminal proceedings to which the Department is not a party. ( )

**02. Subpoena from Private Party.** If the Department is served with a subpoena on behalf of a private party to a civil or criminal proceeding to which the Department is not a party and the private party is not entitled to access the information pursuant to Section 011 of these rules, the Department will move to quash the subpoena and attempt to recover costs if other means of avoiding unauthorized disclosure of the information have been unsuccessful or the court has not already ruled on the disclosure. ( )

**022. RECORDS REQUESTS SUBMITTED BY ELECTRONIC MAIL.**

The Department will only accept records requests sent via e-mail to [records\\_requests@labor.idaho.gov](mailto:records_requests@labor.idaho.gov), unless an alternate method of transmittal is necessary to comply with applicable law or the request is for employment security

information. Records requests sent to any other Department electronic mail address will not be accepted. A person making a records request must include the requestor's name, mailing address, and telephone number. If the request is for employment security information, the person may be required to provide identification to the Department. For security reasons, the Department will not disclose employment security information via electronic mail. ( )

**023. -- 999. (RESERVED)**



**09.01.30 – UNEMPLOYMENT INSURANCE BENEFITS ADMINISTRATION RULES**

**000. LEGAL AUTHORITY.**

These rules are promulgated under Section 72-1333, Idaho Code. ( )

**001. SCOPE.**

These rules govern claims for unemployment insurance benefits. ( )

**002. ADMINISTRATIVE APPEALS.**

Administrative appeals under this chapter are governed by Section 72-1368, Idaho Code and IDAPA 09.01.01, "Rules of Administrative Procedure of the Department of Labor." ( )

**003. -- 009. (RESERVED)**

**010. DEFINITIONS.**

**01. Additional Claim.** An initial claim made after a period of employment subsequent to a new claim in the same benefit year. ( )

**02. Average Annual Wage.** For the purpose of determining the taxable wage base, under Section 72-1350(1), Idaho Code, the average annual wage is computed by dividing that calendar year's total wages in covered employment, excluding State government and cost reimbursement employers, by the average number of workers in covered employment for that calendar year as derived from data reported to the Department of Labor by covered employers. ( )

**03. Average Weekly Wage.** For the purpose of establishing the maximum weekly benefit amount, under Section 72-1367(2)(a), Idaho Code, the average weekly wage is computed by dividing the total wages paid in covered employment (including State government and cost reimbursement employers) for the preceding calendar year, as computed from data reported to the Department of Labor by covered employers, by the monthly average number of workers in covered employment for the preceding calendar year and then dividing the resulting figure by fifty-two (52). ( )

**04. Central Claims Office.** A claims office designated by the director, where unemployment claims throughout the state are processed. ( )

**05. Chargeability Determination.** A determination issued with respect to whether a covered employer's account will be charged for benefits paid on a claim. ( )

**06. Claim.** An application for unemployment insurance or "benefits." ( )

**07. Continued Claim.** An application for waiting-week credit or for benefits for specific compensable weeks. ( )

**08. Corporate Officer.** Any individual empowered in good faith by stockholders or directors in accordance with the corporation's articles of incorporation or bylaws to discharge the duties of a corporate officer. ( )

**09. Fraud Overpayment.** An established overpayment resulting from a determination that the claimant willfully made a false statement or willfully failed to report a material fact in order to obtain benefits. Ref. Sec. 72-1369, Idaho Code. ( )

**10. Full-Time Employment.** A week of full-time employment is one where the claimant worked what are customarily considered full-time hours for that industry or where the earnings were more than one and one half (1-1/2) times his weekly benefit amount. ( )

**11. Initial Claim.** The first claim for benefits made by an unemployed individual during a continuous period of unemployment. An initial claim may be either new or additional. ( )

**12. Interstate Claim.** A claim filed by a worker who resides in a state other than the state (or states) in which he has earned wages in covered employment. ( )

**13. Intrastate Claim.** A claim filed by a worker who resides in Idaho and has earned wages within or as federal wages assigned to Idaho. ( )

**14. Material.** A fact is material if it is relevant to a determination of a claimant's right to benefits. All information a claimant is asked to provide when applying for unemployment benefits or when making a continued claim report is material and relevant to a determination of a claimant's right to benefits. To be considered material, the fact need not actually affect the outcome of an eligibility determination. Ref. Section 72-1366, Idaho Code. ( )

**15. Monetary Determination.** A determination of eligibility which lists a claimant's base period employer(s) and wages and establishes, if the claimant is eligible, his benefit year, his weekly benefit amount, and his total benefit amount. ( )

**16. New Claim.** The first initial claim made in a benefit year. ( )

**17. Non-Fraud Overpayment.** Any established overpayment other than an overpayment resulting from a determination that a claimant made a false statement or willfully failed to report a material fact in order to obtain benefits. Ref. Sec. 72-1369, Idaho Code. ( )

**18. Non-Monetary Determination.** A determination issued by a claims examiner with respect to the personal eligibility conditions of a claimant. ( )

**19. Tolerance Amount.** A tolerance of four dollars and ninety-nine cents (\$4.99) connection with the recovery of overpayments and at the discretion of the Director, overpayments for this amount or less may be compromised. Ref. Sec. 72-1369, Idaho Code. ( )

**011. -- 099. (RESERVED)**

**100. ABLE TO WORK.**

"Able to work" is the physical and mental ability to perform work under conditions ordinarily existing during a normal workweek. It does not mean that a person must be able to perform work in his customary occupation or the same kind of work he last performed. Ref. Sec. 72-1366(4), Idaho Code. ( )

**01. Able to Perform Some Type of Work.** A person must be able to perform work of some type for which he can qualify at the time he files an initial claim for unemployment insurance. ( )

**02. Able to Work Part-Time.** A person who is able to work only part of the workday or part of the workweek is not considered "able to work" for the purposes of Section 72-1366(4), Idaho Code. This rule does not apply to claimants who establish eligibility under Section 150 of these rules, "Claimants with Disabilities." ( )

**03. Disability Compensation.** A claimant's receipt of disability compensation does not in itself establish that he is unable to work or unavailable for work, even though the payee has been declared totally disabled. ( )

**04. Illness Provision.** A person who claims benefits under the illness provision must remain available for local office job referral; however, he may leave the area for treatment of his illness and continue to be eligible under the illness provision. ( )

**05. Illness Provision as Applied to Transitional or Reopened Claim.** The illness provision will continue to apply even though the current benefit year has ended and a transitional claim is filed the following year or the claim is reopened after a period of not filing with no intervening employment. ( )

**06. Withdrawing from Labor Market Because of Illness.** A claimant who withdraws from the labor market because of illness or injury prior to filing a claim is not eligible until he is able and available for work. ( )

**101. -- 124. (RESERVED)**

**125. ALIEN ELIGIBILITY.**

**01. Benefit Eligibility.** To be eligible for benefits, an alien must fall within one (1) of the following three (3) categories at the time the work on which the claim is based was performed and at the time benefits are claimed, the alien must have current, valid authorization to work from the U.S. Department of Homeland Security in order to meet the continuing eligibility requirement of being able and available to work (unless the alien claimant is a Canadian resident who is claiming benefits under the Interstate Benefit Payment Plan, in which case the claimant must satisfy only Canadian availability requirements). Ref. Sec. 72-1366(4), (19), Idaho Code. ( )

**a. Permanent Residence.** Aliens who have been lawfully admitted to the United States as “immigrants” and those whose status has been adjusted from that of “non-immigrant” under the Immigration and Nationality Act. Evidence of this status is the Alien Registration Receipt Card, or “green card,” issued to each lawful permanent resident by the U.S. Department of Homeland Security. ( )

**b. Performing Services.** “Lawfully present for purposes of performing services” includes three (3) groups of aliens: ( )

**i.** Canadian and Mexican residents who commute daily or seasonally and are authorized to work in the United States; ( )

**ii.** Legally-admitted non-immigrants who are granted a status by the U.S. Department of Homeland Security which authorizes them to work in the United States during their stay; and ( )

**iii.** Other aliens with U.S. Department of Homeland Security authorization to work in the United States regardless of their status. ( )

**c. Permanently Residing Under Color of Law.** The category of individuals who are “permanently residing in the United States under color of law” includes the following groups of aliens: ( )

**i.** Refugees, asylees, and parolees, as identified in the Immigration and Nationality Act; ( )

**ii.** Aliens presumed by the U.S. Department of Homeland Security to be lawfully admitted for permanent residence; and ( )

**iii.** Aliens who, after review of their particular circumstances under U.S. Department of Homeland Security statutory or regulatory procedures, have been granted a status which allows them to remain in the United States for an indefinite period of time. For informal U.S. Department of Homeland Security action to authorize an alien’s residence under “color of law,” the U.S. Department of Homeland Security must know of the alien’s presence, and must provide the alien with official, documented assurance that enforcement of deportation is not planned. ( )

**126. -- 149. (RESERVED)**

**150. CLAIMANTS WITH DISABILITIES.**

An individual with a disability under the Americans with Disabilities Act (2008) (as defined at 29 C.F.R. Sec 1630.2(g)), and whose disability prevents the claimant from working full time or during particular shifts is not deemed unable to work or unavailable for work for so long as the claimant is able to perform some work and remains available for work to the full extent of his ability. ( )

**01. Availability Requirement.** A qualified claimant with a disability who is able to work with or without a reasonable accommodation will be considered as having complied with the requirement of being available for work provided the claimant is willing to work the maximum number of hours the claimant is able to work. ( )

**02. Burden of Proof.** Claimant has the burden of proving eligibility under this provision with competent evidence. ( )

**03. Additional Eligibility Requirements.** Qualified claimants with disabilities must meet all other eligibility requirements, including the illness provision of Section 100 of these rules. ( )

**151. -- 174. (RESERVED)**

**175. AVAILABLE FOR WORK.**

“Available for work” is a state of mind that encompasses a readiness and willingness to work, and a desire to find a job, including the possibility of marketing one’s services in the claimant’s area of availability. There must remain a reasonable possibility of a claimant finding and obtaining, or being referred and hired for, suitable work. Ref. Sec. 72-1366(4), Idaho Code. ( )

**01. Availability Requirements.** The type of work for which the claimant is available must exist in the claimant’s area to the extent that a normal unemployed person would generally find work within a reasonable period of time. ( )

**02. Child Care.** Child care must be arranged so as not to restrict a claimant’s availability for work or for seeking work. ( )

**03. Compelling Personal Circumstances.** For the purposes of this rule, compelling personal circumstances are defined as: ( )

**a.** A situation in which the claimant required the assistance of emergency response personnel; ( )

**b.** The serious illness, death, or funeral of an immediate family member; or ( )

**c.** The wedding of the claimant or an immediate family member. ( )

**d.** Under this rule, “immediate family member” means a claimant's spouse, child, foster child, parent, brother, sister, grandparent, grandchild, or the same relation by marriage. ( )

**e.** For the purposes of this rule, “workweek” is defined: ( )

**i.** Code R, U, or X. The claimant's normal work week as defined by the employer. ( )

**ii.** Code B or C. Monday through Friday, 8 a.m.-5 p.m. ( )

**iii.** Code D. Regular class hours. ( )

**f.** Claimant work availability requirements are waived on Independence Day, Thanksgiving Day, Christmas Day, and New Year's Day. ( )

**04. Conscientious Objection.** No person may be held to be unavailable for work solely because of religious convictions not permitting work on a certain day. ( )

**05. Contract Obligation.** A person who is bound by a contract that prevents him from accepting other employment is not eligible for benefits. ( )

**06. Distance to Work.** A claimant seeking work must be willing to travel the distance normally traveled by other workers in his area and occupation. ( )

**07. Domestic Circumstances.** A claimant is not eligible for benefits if domestic circumstances take precedence over the claimant’s availability for work or for seeking work. ( )

**08. Equipment.** Claimants will be required to provide necessary tools or equipment in certain occupations. The lack of these tools or equipment will directly affect a claimant’s availability for work, unless he will accept other work. ( )

**09. Evidence.** A claimant is responsible for providing proof of his availability for work and for seeking work if his availability is questioned or proof is required by these rules. ( )

**10. Experience or Training.** A claimant is expected to be available for work consistent with his past experience or training, provided there is no change in his ability to perform that work. ( )

**11. Full-Time/Part-Time Work.** An individual who restricts availability to part-time work pursuant to Section 72-1366(4)(c), Idaho Code, is fully employed and ineligible to receive benefits if the individual works hours comparable to the part-time work experience in their base period. A claimant must be available for a full workweek and a full, normal workday unless the claimant establishes: ( )

**a.** The majority of weeks worked during claimant's base period were for less than full-time work, which is established where the total base period wages divided by claimant's last regular rate of pay does not exceed two thousand seventy-nine (2079) hours; or ( )

**b.** Eligibility under Section 150 of these rules, "Claimants with Disabilities." ( )

**12. Incarceration/Work Release.** A claimant who is incarcerated for any part of the workweek is not eligible for benefits for that week, unless the claimant can establish he has work release privileges which would provide him a reasonable opportunity to meet his work search requirements and obtain full-time employment. ( )

**13. Jury Duty/Subpoenas.** A claimant serving on jury duty or subpoenaed is excused from the availability and work-seeking requirements of the law for that time period, and may refuse work that would commence during that time period. ( )

**14. Licensing or Government Restrictions.** A claimant prohibited by law from engaging in certain work must be available for other employment to be eligible for benefits. ( )

**15. Moving to Remote Area.** A claimant who moves to a remote locality where there is very little possibility of obtaining work will be ineligible for benefits. ( )

**16. Public Official.** A public official who receives pay and performs "full-time" service is not unemployed or eligible for benefits. Part-time officials, even though receiving pay, may be considered available for work the same as any other individual employed on a part-time basis. Ref. Sec. 72-1312(1). ( )

**17. Public Service.** Performing public service, including voluntary non-remunerated service, does not disqualify an individual for benefits as long as he is meeting the availability and work-seeking requirements. ( )

**18. Restricting Work to Within the Home.** A claimant who restricts his availability to only work done within the home which severely limits the work available to him is ineligible for benefits. ( )

**19. School Attendance or a Training Course.** A person who is attending school or a training course may be eligible for benefits if the attendance does not conflict in any way with that person's availability for work or for seeking work and if he will discontinue attendance upon receipt of an offer of employment that creates a conflict between employment and the schooling or training. ( )

**20. Temporary Absence from Local Labor Market to Seek Work.** All claimants, regardless of their attachment to an industry or employer, must meet the same standard of remaining within their local labor market area during the workweek in order to be considered available for work, unless the primary purpose of a temporary absence is to seek work in another labor market. Claimants otherwise eligible to receive benefits while participating in an approved training program or course are not deemed ineligible when the training or course occurs outside of their local labor market due to the unavailability of similar programs or courses within their local labor market. ( )

**a.** To remain eligible for benefits, claimants will remain within the state, territory, or country included in the USDOL Interstate Benefit Payment Plan. ( )

**21. Time.** ( )

**a.** Time Restrictions. A claimant may not impose restrictions on his time, including either hours of the day or days of the week, which will limit his availability to seek or accept suitable work. ( )

**b.** Shift Restrictions. A claimant who restricts his availability to a single shift may not be fully available for work if the restriction significantly reduces his chances of becoming employed. ( )

**22. Transportation Difficulties.** Lack of transportation is not a bona fide reason for a claimant to fail to be available for or to seek work. Transportation is the responsibility of the claimant. ( )

**23. Unreasonable Restrictions on Working Conditions.** A claimant who places unreasonable restrictions on working conditions so as to seriously hinder his availability and search for work is ineligible for benefits. ( )

**24. Vacation.** A person on a vacation approved by his employer during time when work is available is not eligible for benefits. ( )

**25. Wages.** A claimant is eligible for benefits if the wages or other conditions of available work are substantially less favorable to the claimant than those prevailing for similar work in the local area. Ref. Sec. 72-1366(7)(b), Idaho Code. ( )

**a.** Demanding Higher Wages. A claimant is ineligible for benefits if he unduly restricts his availability for work by insisting on a wage rate that is higher than the prevailing wage for similar work in that area. ( )

**b.** Prior Earnings. The claimant's prior earnings and past experience are considered in determining whether he is available for suitable work. ( )

**26. Waiver of Two-Year Training Limitation.** For purposes of approving a waiver of the two (2) year limitation on school or training courses, specified by Idaho Code Section 72-1366(8)(c)(ii), for claimants who lack skills to compete in the labor market, the following criteria must be met: ( )

**a.** Financial Plan. The claimant must demonstrate a workable financial plan for completing the school or training course after his benefits have been exhausted. ( )

**b.** Demand for Occupation. The claimant must establish there is a demand for the occupation in which the claimant will be trained. A "demand occupation" is one in which work opportunities are available and there is not a surplus of qualified applicants. ( )

**c.** Duration of Training. At the time that the claimant applies for the waiver, the duration of the school or training course is no longer than two (2) years to completion. ( )

**d.** Denial. No claimant will be denied a waiver of the two (2) year limitation on school or training because the claimant is already enrolled or participating in the school or training at the time he requests the waiver. ( )

**176. -- 199. (RESERVED)**

**200. CANCELING CLAIMS.**

Upon the written request of a claimant, a claim may be canceled at any time, provided that the claimant did not misrepresent or fail to report a material fact in making the claim and the claimant has repaid any benefits received on the claim, unless the benefits received will be offset from a new claim the claimant is filing. Ref. Sec. 72-1327A, Idaho Code. ( )

**201. -- 224. (RESERVED)**

**225. DECEASED CLAIMANTS.**

Upon the death of a benefit claimant who has completed a compensable period prior to his death, distribution of benefits due him will be made to the surviving spouse or, if none, to the dependent child or children. If there is no

surviving spouse nor dependent child or children, the benefits become the property of the claimant's estate. ( )

**226. -- 249. (RESERVED)**

**250. DETERMINATIONS/APPELLATE PROCESSES.**

**01. Rebuttal Procedure.** Whenever any information is provided in response to a claim, and the information contradicts a statement made previously, all interested parties will be given an opportunity for rebuttal. Ref. Sec. 72-1368(3), Idaho Code. ( )

**02. Reestablishing Eligibility After a Determination of Ineligibility.** Evidence of requalifying wages includes, but is not limited to, the name of the employer, the mailing address, the dates of employment, the type of employment performed, and the claimant's gross earnings. Ref. Sec 72-1366(14), Idaho Code. ( )

**251. -- 274. (RESERVED)**

**275. DISCHARGE.**

**01. Burden of Proof.** The burden of proving that a claimant was discharged for employment-related misconduct rests with the employer. ( )

**02. Disqualifying Misconduct.** To disqualify a claimant for benefits, misconduct must be connected with the claimant's employment and involve one of the following: ( )

**a.** Disregard of Employer's Interest. A willful, intentional disregard of the employer's interest. ( )

**b.** Violation of Reasonable Rules. A deliberate violation of the employer's reasonable rules. ( )

**c.** Disregard of Standards of Behavior. If the alleged misconduct involves a disregard of a standard of behavior which the employer has a right to expect of his employees, there is no requirement that the claimant's conduct be willful, intentional, or deliberate. The claimant's subjective state of mind is irrelevant. The test for misconduct in "standard of behavior cases" is as follows: ( )

**i.** Whether the claimant's conduct fell below the standard of behavior expected by the employer; and ( )

**ii.** Whether the employer's expectation was objectively reasonable in the particular case. ( )

**03. Inability to Perform or Ordinary Negligence.** Mere inefficiency, unsatisfactory conduct, failure of good performance as the result of inability or incapacity, inadvertencies, isolated instances of ordinary negligence, or good faith errors in judgment or discretion are not considered misconduct connected with employment. ( )

**04. Non-Job Related Conduct.** If the claimant was discharged for conduct involving personal, non-job related behavior, the discharge is not for misconduct connected with employment. ( )

**05. When Notice of Discharge Prompts a Resignation.** If a claimant has resigned after receiving a notice of discharge (or lay off due to a lack of work), but before the effective date of the discharge, both "separations" must be considered. The following three (3) elements should be present for both actions to affect the claimant's eligibility: ( )

**a.** The employee was given notice by the employer of a specific separation date; ( )

**b.** The employee's decision to quit before the effective date of the termination was a consequence of the pending separation; and ( )

**c.** The voluntary quit occurred a short time prior to the effective date of the termination. ( )

**06. Indefinite Suspension.** A claimant who has been suspended without pay for an indefinite period of time, who has not been given a date to return to work, is considered discharged. ( )

**276. -- 324. (RESERVED)**

**325. EMPLOYEES OF EDUCATIONAL INSTITUTIONS.**

**01. Possibility of Employment.** An offer of employment by an educational institution or service agency is not “bona fide” if merely a possibility of employment exists. A possibility of employment, rather than a reasonable assurance, exists when: ( )

**a.** The circumstances under which the claimant would be employed are not within the control of the educational institution; and ( )

**b.** The educational institution does not provide evidence that such an individual normally would perform services the following academic year. ( )

**02. Reasonable Assurance.** “Reasonable assurance” of continuing employment exists when an educational institution or service agency provides an oral or written statement to the Department indicating that the claimant has been given a bona fide offer of a specific job in the second academic period. In addition, for such “reasonable assurance” to exist, the terms and conditions of the job offered in the second period must not be substantially less favorable than the terms and conditions of the job performed in the first period. ( )

**03. Reasonable Assurance Later Given.** A claimant who initially was determined not to have a reasonable assurance of continuing employment, will subsequently become disqualified for benefits under Sections 72-1366(17)(a), (b), or (c), Idaho Code, when an educational institution or service agency gives the claimant such reasonable assurance. ( )

**04. Retroactive Payments.** A claimant seeking retroactive payments pursuant to 72-1366(17)(b), Idaho Code, must make a request for the retroactive payment with the Department no later than thirty (30) days after the beginning of the second school year or term or retroactive payment will not be made. In addition, the claimant must provide written evidence from the employer who previously provided reasonable assurance of continuing work, that the claimant was not offered an opportunity to return to work in the second of two (2) successive school years or terms. ( )

**05. Under Contract, but Between School Terms.** Employees of educational institutions who are hired under contract for the school term, are considered unemployed between school terms even though they may receive their salary in twelve (12) monthly payments. ( )

**326. -- 349. (RESERVED)**

**350. EXTENDED BENEFITS.**

Ref. Sec. 72-1367A, Idaho Code. ( )

**01. Evidence of Employment for Extended Benefits.** Satisfactory evidence that an individual’s prospects for obtaining work in his customary occupation within a reasonably short period includes: ( )

**a.** A letter signed by a prospective employer giving assurances of work within the next four (4) weeks; or ( )

**b.** A verifiable, written statement by the claimant that he will have work within the next four (4) weeks. ( )

**02. Remuneration Earned.** Remuneration earned must be in employment where an employee-employer relationship exists to satisfy requalification requirements for Extended Benefits. ( )



**351. -- 374. (RESERVED)**

**375. FULLY EMPLOYED/NOT UNEMPLOYED.**

Ref. Section 72-1312(1), Idaho Code. ( )

**01. Excessive Earnings Week.** An excessive earnings week is a week in which the claimant's wages allocable to that week are more than one and one half (1-1/2) times the claimant's weekly benefit amount. ( )

**02. Leave of Absence.** A claimant who is on a mutually agreed upon leave of absence, and whose employer has committed to the claimant's return to work at the end of the leave, is employed and not eligible for benefits. ( )

**03. Suspension.** A claimant suspended with or without pay for a specific number of days, who has been given a date to resume employment after the suspension, is not considered unemployed and is not eligible for benefits. ( )

**04. Corporate Officer.** ( )

**a.** A corporate officer has the burden of proving by a preponderance of evidence that he is unemployed due to circumstances beyond his control or the control of a family member with an ownership interest in the corporation. ( )

**b.** Circumstances beyond a corporate officer's control or the control of a family member with an ownership interest in the corporation. Circumstances beyond a corporate officer's or a family member's control are circumstances that last through the corporate officer's benefit year end date and include, but are not limited to, the following: ( )

**i.** Unemployment due to the corporate officer's removal from the corporation under circumstances that satisfy the personal eligibility conditions of Section 72-1366, Idaho Code; ( )

**ii.** Unemployment due to dissolution of the corporation; or ( )

**iii.** Unemployment due to the sale of the corporation to an unrelated third party. ( )

**376. -- 399. (RESERVED)**

**400. LABOR DISPUTE/UNION RULES.**

A "labor dispute" is a controversy with respect to wages, hours, working conditions, or right of representation affecting the work or employment of a number of individuals employed for hire which results in a deadlock or impasse between the contending parties. Ref. Sec. 72-1366(7), (10), Idaho Code. ( )

**01. Burden of Proving Nonparticipation.** The burden of proving non-participation, lack of financing and similar factors is upon the claimant. ( )

**02. Involvement of Work Site in Labor Dispute.** A claimant will not be denied benefits because of a labor dispute if the dispute is not in any way directly connected with the factory, establishment, or premises at which the individual is or was last employed. ( )

**03. Lack of Work.** A claimant's unemployment will be deemed due to lack work and not due to a labor dispute if it is shown that because of the labor dispute the employer's business has fallen off to the extent that he can no longer utilize the services of the claimant due to the drop in business. ( )

**04. Laid Off Before Labor Dispute.** A claimant laid off because of lack of work from an employer where a labor dispute later occurred will not be considered unemployed due to the labor dispute. ( )

**05. Period of Ineligibility.** The period of ineligibility applies for the whole of any week in which any part of a claimant's unemployment is due to a labor dispute. ( )

**06. Picketing Work Site.** The act of picketing the work site of a labor dispute constitutes participation in the labor dispute, whether or not payment is made for such services. ( )

**07. Refusal to Cross Picket Line.** Voluntary refusal to cross a peaceable picket line to work constitutes participation in the labor dispute. ( )

**08. Subsequent Employment.** Subsequent employment does not make the claimant eligible for benefits if his unemployment is still due to the labor dispute. As long as the claimant intends to return to the employer where the labor dispute exists, his unemployment is due to the labor dispute regardless of any intervening employment. ( )

**09. Termination of Labor Dispute.** The period of ineligibility due to the labor dispute terminates at the end of the calendar week in which the labor dispute no longer exists. The termination of the dispute does not automatically make a claimant eligible for benefits. ( )

**10. Union Member.** The fact that an individual is a dues-paying union member alone does not constitute financing a labor dispute. Nor does the fact that he is not a union member establish that he is not financing or participating in the dispute. ( )

**401. -- 424. (RESERVED)**

**425. NEW CLAIMS/ADDITIONAL CLAIMS.**  
Ref. Sec. 72-1308, Idaho Code. ( )

**01. Claims for Benefits, Delayed Filing.** When the Central Claims Office has determined that a claimant's attempt to file an initial claim was delayed due to problems with the Department's telephone or electronic filing system, the claim may be backdated if the claimant reported the access problem to the Central Claims Office within seven (7) days of the date the problem occurred. When a claim is backdated, the continued claim report for the period of time involved is timely if filed during the same week or the next week after the claim is filed. ( )

**02. Effective Date of Backdated Claims.** When the filing of an initial claim for benefits is backdated due to a Department system malfunction, the effective date is the Sunday of the week in which the claimant first reported to the Central Claims Office to file the claim or attempted to access the telephone or electronic claim filing system and there were problems with the system. ( )

**03. Filing of New Claims, Additional, and Reopen Claims.** Intrastate and interstate claims, including, without limitation, new claims, additional claims, and reopen claims, may be filed electronically or by telephone at the Department's discretion. ( )

**a. Electronically Filed Claims.** Claimants may file claims electronically by accessing Idaho's Internet claim system or, if filing through an American Job Center, by accessing the Department's Intranet claim system. Electronically filed claims will be date and time stamped at the time the claimant completes the application process. The claim will not be completed until the claimant has finished the process and has electronically submitted the claim to the Department. A claim filed via the Internet or an American Job Center is effective as of the Sunday of the week of the date shown on the date/time stamp. ( )

**b. Interstate Claims.** Any claim filed by an interstate claimant is accepted in the same manner and conditions for which claims are accepted from intrastate claimants. ( )

**c. Telephone Claims.** A claimant may also file a claim by calling the Central Claims Office. A claim filed via telephone is effective as of the Sunday of the week in which the claimant first calls the Central Claims Office to initiate the claim. ( )

**d. Claimants' Electronic Verification.** A unique confidential number or other electronic method of verification approved by the Department may be used by a claimant or an employer to submit information or engage in transactions with the Department through electronic or telephonic means. Use of this method of verification has the

same force and effect as a manual signature. ( )

**04. Registration/Reporting Requirements -- Interstate Claimants.** Interstate claimants are required to comply with the same reporting requirements prescribed for regular Idaho intrastate claimants. Ref. Sec. 72-1366(1), (2), Idaho Code. ( )

**05. Requirement to Provide Information.** If a claimant fails to provide the Department with all necessary information pertinent to eligibility, the claimant is denied benefits until the information is provided. Any individual making a claim for benefits must provide the Department with: ( )

- a. The claimant's legal name; ( )
- b. The claimant's Social Security Number; ( )
- c. The address where the claimant's mail is delivered; ( )
- d. The claimant's place of last employment; ( )
- e. The name, correct mailing address, dates of employment, and the reason for separation from all of the claimant's most recent and base-period employers; ( )
- f. If requested by the Department, a list of all other employment in the past twenty-four (24) months; ( )
- g. The claimant's plans for finding other employment at the earliest possible time; and ( )
- h. Other information necessary for the proper processing of the claim. ( )
- i. Once a claim has been established, the claimant must provide, upon request, a record of the claimant's work search, in order for the Department to assess compliance with personal eligibility requirements. ( )
- j. If the claimant's identifying information does not match with data provided by the Social Security Administration, the Division of Motor Vehicles, or other public entities for identity verification purposes, the claimant will be provided notice and an opportunity to provide proof of identity before benefits are denied. ( )

**06. Separation Notice.** ( )

**a. Notice to Employer of Separation.** Every employer (including employers not subject to Title 72, Chapter 13, Idaho Code), when contacted by a Department representative for a response, must respond to the Department with the reasons for the separation whenever the claimant: ( )

- i. Left his employment voluntarily; ( )
- ii. Was discharged from his employment due to misconduct; ( )
- iii. Is unemployed due to a strike, lockout, or other labor dispute; ( )
- iv. Is not working due to a suspension; or ( )
- v. Was separated for any other reason except lack of available work. ( )

**b. Employer Response.** The employer's response must be given by the employer or on the employer's behalf by someone having personal knowledge of the facts concerning the separation. The employer should provide to the Department, via electronic media or mail, copies of any documentation supporting their position. ( )

**07. Additional Claim or Reopened Claim.** A claim must be reestablished after a claimant has failed

to report or has reported excessive earnings for two (2) or more consecutive weeks. ( )

**08. Use of Wage Credits.** All unemployment insurance wage credits from any source that are assignable to the state of Idaho will be used in establishing a claim and determining the claimant's monetary eligibility. Ref. Sec. 72-1367(1), Idaho Code. ( )

**09. Valid Claim.** To be a valid claim for benefits, a claim must be filed during a week of no work, a week of less than full-time work in which the total wages payable to the claimant for work performed in such week amount to less than one and one-half (1-1/2) times the claimant's weekly benefit amount, or a week in which the claimant is separated from employment. Ref. Sec. 72-1327A and 72-1312, Idaho Code. ( )

**426. -- 449. (RESERVED)**

**450. QUIT.** Ref. Sec. 72-1366(5), Idaho Code. ( )

**01. Burden of Proof.** The claimant has the burden of proof to establish that he voluntarily left his employment with good cause in connection with the employment to be eligible for benefits. ( )

**02. Cause Connected with Employment.** To be connected with employment, a claimant's reason(s) for leaving the employment must arise from the working conditions, job tasks, or employment agreement. If the claimant's reason(s) for leaving the employment arise from personal/non job-related matters, the reasons are not connected with the claimant's employment. ( )

**03. Good Cause.** The standard of what constitutes good cause is the standard of reasonableness as applied to the average man or woman. Whether good cause is present depends upon whether a reasonable person would consider the circumstances resulting in the claimant's unemployment to be real, substantial, and compelling. ( )

**04. Moral or Ethical Quit.** A claimant who leaves a job because of a reasonable and serious objection to the work requirements of the employer on moral or ethical grounds and is otherwise eligible, will not be denied benefits. ( )

**05. Quit Due to Health or Physical Condition.** A claimant whose unemployment is due to his health or physical condition which makes it impossible for him to continue to perform the duties of the job will be deemed to have quit work with good cause connected with employment. ( )

**06. Quit for Permanent Work or Quit Part-Time Work for Increase in Work Hours.** A claimant who quits a temporary job for a permanent job or who quits part-time employment for employment with an increase in the number of hours of work will be deemed to have quit work with good cause connected with employment. ( )

**07. Quit or Retirement During Employer Downsizing.** An individual who has continuing suitable work available and who voluntarily elects to retire or to terminate employment during a period of reorganization or downsizing will be deemed to have voluntarily quit the employment for personal reasons. ( )

**08. Unrelated Discharge Prior to Pending Resignation.** The eligibility of a claimant discharged before a pending resignation has occurred for reasons unrelated to the pending resignation will be determined on the basis of the discharge. ( )

**09. When Notice of Resignation Prompts a Discharge.** If a claimant had given notice of a pending resignation, but was discharged before the effective date of the resignation, both "separations" must be considered. The following three (3) elements should be present for both actions to affect the claimant's eligibility: ( )

a. The employee gave notice to the employer of a specific separation date; ( )

b. The employer's decision to discharge the claimant before the effective date of the resignation was a

consequence of the pending separation; and ( )

c. The discharge occurred a short time prior to the effective date of the resignation. ( )

**10. Quit Due to Harassment.** Good cause for quitting employment may be established by showing the party was subjected to any form of harassment that is unlawful under the Idaho Human Rights Act, Title 67, Chapter 59, Idaho Code. ( )

**451. -- 459. (RESERVED)**

**460. PROFESSIONAL ATHLETES BETWEEN SEASONS.**  
Ref. Sec. 72-1366(18), Idaho Code. ( )

**01. Base Period Wages.** No base period wages are used to establish a claim when substantially all services performed during the base period consist of participation in sports, athletic events, training, or preparing to so participate, for any week which commences during the period between two (2) successive sport seasons (or similar periods) if the individual performed such services in the first season (or similar period) and there is a reasonable assurance that the individual will perform such services in the later of such seasons (or similar periods). ( )

**02. Reasonable Assurance.** Reasonable assurance requires the following: ( )

a. The claimant has a contract, either written or oral; ( )

b. The claimant offered to work and the employer expressed an interest in hiring the player for the next season (or similar period); or ( )

c. The claimant expresses a readiness and willingness or intent to participate in the sport the following season. Reasonable assurance exists if the claimant asserts he or she intends to pursue employment as a professional athlete the next season despite not having a specific employer to return to or a formal offer of employment. ( )

**03. Substantially All Services.** An individual is deemed to have performed “substantially all services” in sports, athletic events, training, or preparing to so participate if ninety percent (90%) or more of the base period wages were based on such services. ( )

**461. -- 474. (RESERVED)**

**475. REFUSAL OF WORK/FAILURE TO APPLY.**  
Ref. Sec. 72-1366(6), (7), Idaho Code. ( )

**01. Citizenship or Residency Requirements.** An employer’s restrictions on citizenship or residency is deemed good cause for a claimant’s failure to apply for available work if he does not meet the requirements. ( )

**02. Claimant Conduct.** A claimant who, by his conduct, causes an employer to withdraw an offer of suitable work or terminate the offer after the claimant has accepted it is ineligible. ( )

**03. Claimant Responsibility.** A claimant has the responsibility to apply for and accept suitable work. ( )

**04. Conscientious Objection.** A claimant may refuse employment that requires him to work on his Sabbath if his religious convictions do not permit him to work on that day. ( )

**05. Employer Requirements.** Claimants are expected to comply with reasonable, lawful requirements that are typical of certain occupations, such as a requirement that a worker be bonded. Unreasonable requirements by employers will not be used as a basis to deny benefits. However, a claimant must have good cause to refuse or fail to meet an employer’s reasonable, lawful employment requirements to be eligible for benefits. ( )

**06. Failure to Report.** A claimant who fails to report to the Department when so directed, fails to follow explicit instructions for applying for suitable, available work, or fails to report to work after accepting employment, without good cause, is ineligible. Ref. Sec. 72-1366(2), (6), Idaho Code. ( )

**07. Failure to Return to Work After Layoff.** A claimant who has been laid off, but fails to return to work on the date specified by the employer at the time of layoff or fails to respond to a callback after a layoff, will be considered to have refused an offer of work if the ongoing employment relationship is severed as a result. If the claimant declines work with the employer but the ongoing employment relationship is not severed as a result, the claimant's availability for work will be examined, but the claimant will not be considered to have refused an offer of work under Sections 72-1366(6) or (21)(a)(ii)(A), Idaho Code. ( )

**08. Government Requirements.** A claimant who cannot meet government requirements within a reasonable period of time has good cause for refusing that opportunity to work. ( )

**09. Moral Objections.** A claimant is not ineligible for failing to apply for or accept employment if the claimant has reasonable, serious objections to the work or the workplace on moral or ethical grounds. ( )

**10. Offer of Work.** A claimant whose unemployment is due to his failure without good cause to accept available, suitable work is ineligible. The job offer must have been genuine and known to the claimant. ( )

**11. Part-Time Work.** A claimant must be available for and willing to accept suitable part-time work in the absence of suitable full-time work. ( )

**12. Personal Circumstances.** To have good cause to refuse to apply for or accept available, suitable work because of personal circumstances, a claimant must show that his circumstances were so compelling that a reasonably prudent individual would have acted in the same manner under the same circumstances. ( )

**13. Prospect of More Suitable Work.** A claimant is not ineligible for failing to accept employment if he has excellent prospects for more suitable work with his former employer or in his regular occupation. ( )

**14. Suitable Work.** Every claimant has the right to restrict his availability to suitable work. ( )

**15. Travel Distance.** A claimant is not ineligible if the travel distance to available work is excessive or unreasonable. A claimant is ineligible if he fails to apply for and accept suitable work within a commuting area similar to other workers in his area and occupation. ( )

**476. -- 499. (RESERVED)**

**500. REISSUING BENEFIT PAYMENTS.**

Whenever a benefit payment is lost, stolen, destroyed, or forged, the claimant will be issued a new benefit payment upon his proper presentation of the facts and submission of an affidavit, in a form prescribed by the Department, for the issuance of a new benefit payment. Ref. Section 72-1368(1), Idaho Code. ( )

**01. Affidavit for Issuance of New Benefit Payment.** A claimant's affidavit filed for the issuance of a new benefit payment must be signed before a notary public or an authorized representative of the Department. ( )

**02. Reissuance of Stolen Benefit Payments.** If a claimant knows who took a benefit payment, he must provide evidence that he has taken all reasonably available legal steps and been unsuccessful in recovering the benefit payment before the Department will consider reissuing the benefit payment. ( )

**501. -- 524. (RESERVED)**

**525. REPORTABLE INCOME.**

Ref. Sections 72-1312, 72-1328, Idaho Code. ( )

**01. Back Pay or Disputed Wages.** Amounts received as a result of labor relations awards or

judgments for back pay, or for disputed wages, constitute wages for the weeks in which the claimant would have earned them, or are assignable to the weeks stipulated in the award or judgment. ( )

**02. Disability/Injury Compensation.** Injury or disability compensation payments are not considered wages and are not reportable income for unemployment insurance purposes. ( )

**03. Disability Retirement Payments.** Retirement payments as a result of disability are treated the same as other types of retirement payments. Ref. Section 72-1312(4), Idaho Code. ( )

**04. Gratuities or Tips.** Gratuities or tips must be reported by a claimant for the week in which each gratuity or tip is earned. ( )

**05. Holiday Pay.** Holiday pay must be reported as though earned in the week in which the holiday occurs. ( )

**06. Non-Periodic Remuneration.** All non-periodic remuneration such as one-time severance pay, profit sharing, and bonus pay is reportable for the week in which paid. ( )

**07. Penalty or Damage Awards.** Amounts awarded to a claimant as a penalty or damages against an employer, other than for lost wages, do not constitute wages. ( )

**08. Pension, Retirement, or Annuity Payments.** The pension deduction provision of Section 72-1312(4), Idaho Code, only applies if the pension, retirement pay, annuity, or other similar periodic payment is made under a plan maintained or contributed to by a base period employer. The dollar amount of the weekly pension will be deducted from the claimant's weekly benefit amount unless the claimant has made contributions toward the pension. If the claimant has made contributions toward the pension plan, no deduction for the pension will be made from the claimant's weekly benefit amount. Ref. Section 72-1312(4), Idaho Code. ( )

**a. Pension Contributions.** The burden is on the claimant to establish by substantial, competent evidence that he has made contributions toward the pension, retirement pay, annuity or other similar payment plan. ( )

**b. Pension Payment Changes.** Any change in the amount of the pension, retirement, or annuity payments which affects the deduction from the claimant's weekly benefit amount will be applied in the first full week after the effective date of the change. ( )

**09. Relief Work or Public Assistance.** ( )

**a. Remuneration received for relief work or public service work will be considered wages on the same basis as any other employment.** ( )

**b. Eligibility When Public Assistance Received.** A person receiving public assistance is eligible for benefits if no work is involved and the claimant is otherwise eligible. ( )

**10. Self-Employment Earnings.** When reporting earnings, a claimant must report gross earnings from self-employment. ( )

**11. Severance Pay.** An equal portion of a periodic severance payment must be reported in each week of the period covered by the payment. However, severance pay received in a lump sum payment at the time of severance of the employment relationship must be reported when paid. ( )

**12. Vacation Pay.** Vacation pay allocable to a certain period of time in accordance with an employment agreement must be reported in the week to which it is allocable. However, vacation pay received in a lump-sum payment at the time of severance of the employment relationship must be reported when paid. ( )

**13. Verification of Earnings on Claim Reports.** The Department may verify the earnings and/or reasons for separation reported by claimants on claim reports filed for benefit payments. Ref. Section 72-1368(1),

Idaho Code. ( )

**14. Wages for Contract Services.** A person who is bound by a contract which does not prevent him from accepting other employment but who receives pay for a period of not working, is required to report the contract payments as earnings in equal portions in each week of the period covered by the contract. This rule does not apply to employees of educational institutions. ( )

**15. Wages for Services Performed Prior to Separation.** Wages for services performed prior to a claimant's separation are reportable for the week in which earned. ( )

**16. Temporary Disability Benefits.** For any week with respect to which a claimant is receiving or has received temporary disability benefits under a worker's compensation law of any state or under a similar law of the United States, such payments must be reported in an amount attributable to such week. ( )

**526. -- 549. (RESERVED)**

**550. REPORTING REQUIREMENTS.**

Each claimant must report weekly or biweekly for benefits as directed. When filing claim reports, a claimant must use the reporting method assigned by the Department. Failure to file timely reports in a manner required by this rule will result in ineligibility for benefits for the week(s) claimed. Ref. Section 72-1366(1), Idaho Code. ( )

**01. Mailed Reports.** Reports that are mailed are considered timely when the envelope containing the report is postmarked within nine (9) calendar days immediately following the week(s) being claimed, except if the ninth day is a holiday, the report period will extend to the next working day. ( )

**02. Internet Reports.** Reports filed via the Internet are considered timely when made between 12:00 a.m., mountain time zone, of the Sunday following the week being claimed and midnight 11:59 p.m., mountain time zone of the Saturday following the week being claimed. ( )

**03. Facsimile Reports.** Reports filed by facsimile are considered timely when transmitted on a form provided by the Department to a telephone number designated by the Department to receive such documents within nine (9) calendar days immediately following the week(s) being claimed, except if the ninth day is a holiday, the reporting period will extend to the next working day. Reports are deemed filed upon receipt by the Department. ( )

**04. Electronic Mail Reports.** Reports filed by electronic mail are considered timely when electronically mailed in a format provided by the Department to an email address designated by the Department to receive such documents within nine (9) calendar days immediately following the week(s) being claimed, except if the ninth day is a holiday, the reporting period will extend to the next working day. Reports are deemed filed upon receipt by the Department. ( )

**05. Telephone Reports.** Reports filed by telephone are timely if the claimant contacts the Central Claims Office at a telephone number designated by the Department to provide such reports during regular business hours within nine (9) calendar days immediately following the week(s) being claimed, except if the ninth day is a holiday, the report period will extend to the next working day. ( )

**06. When Report Missing.** If a claimant establishes, by credible and corroborated evidence, that a missing report was properly filed as required by this rule, a replacement report will be considered timely. ( )

**551. -- 574. (RESERVED)**

**575. SEEKING WORK.**

Ref. Sec. 72-1366(4), (6), Idaho Code. ( )

**01. Attitude and Behavior.** A claimant's attitude and behavior must be conducive to a positive reaction by employers to his job search. ( )



**02. Effort to Secure Employment.** A claimant will be expected to do what is normally done by unemployed persons that are seeking work. ( )

**03. Employer's Hiring Practices.** An employer's reluctance to hire a claimant because of his appearance or physical condition is not a determining factor in ruling on the claimant's eligibility. ( )

**04. Job Attachment Classifications.** For the purpose of administering the work search requirements of Section 72-1366(4) and (6), Idaho Code, a claimant will be classified according to his attachment to an employer or industry, as follows: ( )

**a.** Code R-Recall, U-Union or X-Both. A claimant who has a firm attachment to an employer, industry or union, or who is temporarily or seasonally unemployed, and expects to return to his former job or employer in a reasonable length of time not to exceed a maximum of sixteen (16) weeks. If during the sixteen (16) weeks the claimant returns to work temporarily for the job attached employer, the claimant's period of job attachment will be extended by one (1) week for each week of verified full-time employment as defined by Section 72-1312, Idaho Code. ( )

**b.** Code B. A claimant who possesses marketable skills in an occupation, but has no immediate prospects for reemployment, and whose employment expectations (i.e., wages, hours, etc.) are realistic in relation to the normal labor market supply and demand in his area of availability. ( )

**c.** Code D. A claimant who is assigned to a training course under the provisions of Section 72-1366(8), Idaho Code. ( )

**05. Jobs Availability.** A claimant will not be required to make useless employer contacts if there are no jobs available in the area due to seasonal factors. ( )

**06. License or Permits.** A claimant must provide or be capable of obtaining a license or permit if required by law for performance of the work. ( )

**07. No Employment Prospects.** A claimant must apply for and accept a lower or beginning pay rate for employment if he has no prospects for a better paying job in the locality. ( )

**08. Seasonal Availability.** A claimant who is regularly employed on a seasonal basis must be available for other types of work in the off-season to be eligible for benefits. ( )

**09. Work-Seeking Requirement Categories.** A claimant must seek work in accordance with the following categories of work-seeking activity, as instructed by a Department representative or as notified by the Department via electronic claims messaging. A claimant must meet the requirements of the code to which the claimant is assigned. A claimant's category of work-seeking activity will be determined and modified based on the claimant's prevailing local labor market conditions and/or the average county unemployment rates. Failure to comply with work-seeking requirements will result in a denial of benefits. ( )

**a.** Code O claimant must maintain regular contact with his employer(s) or union. ( )

**b.** Code 1 claimant must engage in one (1) or more of the following activities to increase his prospects of securing employment: ( )

i. Make at least one (1) employer contact each week in the manner prescribed by the Central Claims Office; ( )

ii. Attend a Job Search Workshop; ( )

iii. Expand work search efforts to surrounding areas or states; ( )

iv. Send resumes to firms/businesses that hire people with his skills; ( )

v. Enroll in and attend a specific training program to meet the requirements of the claimant's employment plan; or ( )

vi. Engage in other work search activities such as resume preparation or labor market research, as prescribed by a Department representative. ( )

**c.** Code 2 claimant must engage in one (1) or more of the following activities to increase his prospects of securing employment: ( )

i. Make at least two (2) employer contacts per week in the manner prescribed by the Central Claims Office; ( )

ii. Attend a Job Search Workshop; ( )

iii. Expand work search efforts to surrounding areas or states; ( )

iv. Send resumes to firms/businesses that hire people with their skills; ( )

v. Enroll in and attend a specific training program to meet the requirements of the claimant's employment plan; or ( )

vi. Engage in other work search activities such as resume preparation or labor market research, as prescribed by a Department representative. ( )

**d.** Code 3 claimant must engage in one (1) or more of the following activities to increase his prospects of securing employment: ( )

i. Make at least three (3) employer contacts per week in the manner prescribed by the Central Claims Office; ( )

ii. Attend a Job Search Workshop; ( )

iii. Expand work search efforts to surrounding areas or states; ( )

iv. Send resumes to firms/businesses that hire people with their skills; ( )

v. Enroll in and attend a specific training program to meet the requirements of the claimant's employment plan; or ( )

vi. Engage in other work search activities such as resume preparation or labor market research, as prescribed by a Department representative. ( )

**576. -- 599. (RESERVED)**

**600. SELF-EMPLOYMENT.**

A claimant is ineligible when his self-employment is of such size and nature that the operation of it is his principal duty and working for an employer is merely incidental. Ref. Sec. 72-1366(13), Idaho Code. ( )

**01. Occupational Conflicts.** Agricultural activities, commercial enterprises, family enterprises, and commission sales work are examples of self-employment which may render a claimant ineligible unless he can show he is seeking employment and is available for suitable work. ( )

**02. Potential Employability.** A claimant is eligible if his self-employment in no way interferes with his potential employability and work schedule. ( )

**601. -- 649. (RESERVED)**

**650. SIGNATURES OF ILLITERATES AND WITNESSES.**

If a claimant is unable to write his name, he must instead use the mark (X). The mark must be witnessed by a Department representative or an individual who must enter, immediately after the mark (X), the words "His Mark." Next, the name of the claimant must be printed, followed by the signature of the Department representative or the individual who witnessed the mark. Ref. Sec. 72-1366 (1), Idaho Code. ( )

**651. -- 674. (RESERVED)**

**675. TOTAL TEMPORARY DISABILITY ALTERNATE BASE PERIOD (TTD).**

The alternate base period provision of Section 72-1306(2), Idaho Code, will apply only if the claimant cannot establish monetary eligibility by using the regular base period described in of Section 72-1306(1), Idaho Code. ( )

**676. -- 699. (RESERVED)**

**700. PARTIAL PAYMENTS OF AMOUNTS OWED THE DEPARTMENT.**

Upon the Department's receipt of a partial payment of an overpayment and accrued interest and penalties thereon, the Department must, unless other arrangements have been made with the debtor and approved by the Department, apply the partial payment to the amounts owed as follows: ( )

**01. Interest.** The partial payment must be applied first to any accrued interest of the amounts due, starting with the oldest accrued interest; ( )

**02. Penalties.** After any accrued interest has been paid in full, the partial payment must be applied next to any assessed penalties, starting with the oldest assessed penalty; ( )

**03. Fraud Overpayments.** After all accrued interest and assessed penalties have been paid in full, the partial payment must be applied next to any fraud overpayments due, starting with the oldest fraud overpayment; and ( )

**04. Nonfraud Overpayments.** After all fraud overpayments have been paid in full, the partial payment must be applied next to any nonfraud overpayments, starting with the oldest nonfraud overpayment. Ref. Sec. 72-1369, Idaho Code. ( )

**701. -- 724. (RESERVED)**

**725. RECOVERIES.**

Unless the overpayment resulted from a determination that the claimant willfully made a false statement or willfully failed to report a material fact, overpayments will be deducted from any future benefits payable. Ref. Secs. 72-1369 and 72-1366, Idaho Code. ( )

**726. -- 749. (RESERVED)**

**750. WAIVER OF REPAYMENT.**

An interested party must submit a written request for a waiver of repayment within fourteen (14) days of the date of mailing of the Determination of Overpayment. Ref. Sec.72-1369 ( )

**751. -- 999. (RESERVED)**

**09.01.35 – UNEMPLOYMENT INSURANCE TAX ADMINISTRATION RULES**

**000. LEGAL AUTHORITY.**

These rules are promulgated under Section 72-1333, Idaho Code. ( )

**001. SCOPE.**

These rules govern Department procedures and the rights and duties of employers under the Unemployment Insurance Program. ( )

**002. ADMINISTRATIVE APPEALS.**

Administrative appeals from determinations under this chapter may be taken as provided in IDAPA 09.01.01, "Rules of Administrative Procedure of the Department of Labor," and Sections 72-1361 and 72-1368, Idaho Code. ( )

**003. -- 010. (RESERVED)**

**011. GENERAL PROVISIONS.**

**01. Quarterly Reporting.** Subject employers shall report all wages paid for services in covered employment each calendar quarter. In the event a subject employer does not pay wages during a calendar quarter, the employer shall file a quarterly report indicating that no wages were paid. Ref. Section 72-1337, Idaho Code. ( )

**02. Contribution Due Date.** If the normal due date falls on a weekend or holiday the next workday is the due date for contributions. Ref. Section 72-1349, Idaho Code. ( )

**03. Penalties and Interest on Bankruptcy.** Penalty and/or interest shall not be assessed on amounts covered in the Department's Proof of Claim with the Bankruptcy Court for the period after the filing date of the Bankruptcy Petition and ending with the conclusion of bankruptcy proceedings and distribution of assets. Post petition penalty and interest shall be compromised, provided the amount due is paid in full by a date established after the termination of the bankruptcy proceedings. Ref. Section 72-1356, Idaho Code. ( )

**04. Lien Interest.** Lien interest on a delinquent account shall be assessed against the remaining unpaid balance computed from the day following the recording of a tax lien. Ref. Section 72-1360, Idaho Code. ( )

**05. Penalty and Interest During Controversy.** Penalty and/or interest shall be compromised for periods when a valid controversy exists if amounts determined to be due are paid in full by a date established at the conclusion of the issue. Ref. Sections 72-1354 and 72-1360, Idaho Code. ( )

**06. Determinations and Appeals.** The rules governing the form, filing, and other procedures relating to determinations under this chapter, and any appeal from those determinations, are provided in IDAPA 09.01.01, "Rules of Administrative Procedure of the Department of Labor." ( )

**07. When Reports Replace Determinations.** In cases where a determination of amounts due is made by the Department pursuant to Section 72-1358, Idaho Code, the reports shall replace the determination and will be used to establish the employer's liability if: ( )

**a.** The employer files reports for the periods covered by the determination before the determination becomes final; and ( )

**b.** The Department determines that the reports are accurate and complete. If the Department determines the reports are not accurate or complete, the reports shall be treated as an appeal of the determination. ( )

**08. Determination of Payment Date.** Each amount shall be deemed to have been paid on the date that the Department receives payment thereof in cash or by check or other order for the payment of money honored by the drawer on presentment; provided, that if sent through the mail, it shall be deemed to have been paid as of the date mailed as determined by the postmark on the envelope containing same, or the date of the check in lieu of a postmark. Provided further, that in the case of payments received by means of garnishment, execution, or levy, the amount received shall be deemed to have been paid as of the date that the order of garnishment, execution, or levy is served. Ref. Section 72-1349, Idaho Code. ( )

**09. Release of Lien upon Payment in Full.** An amount secured by a lien shall be deemed to be satisfied when payment in full is received by the Department in the form of cash, money order, or other certified ( )

funds, or proof presented that a check or other negotiable instrument has been honored by its drawer upon presentment. Ref. Section 45-1908, Idaho Code. ( )

**10. Contribution Reports.** Each contribution shall be accompanied by an employer's contribution report. All contribution reports shall be filed electronically with the department unless the employer has petitioned the department in writing for a waiver and the department has granted a waiver allowing the filing of a non-electronic contribution report. All contribution reports shall be in a form or medium prescribed and furnished or approved for such purpose by the department, giving such information as may be required, including number of individuals employed and wages paid or payable to each, which must be signed, furnished, or acknowledged by the covered employer or, on their behalf by someone having personal knowledge of the facts therein stated, and who has been authorized by the covered employer to submit the information. Ref. Section 72-1349, Idaho Code. ( )

**a.** Common paymaster arrangements as referenced by Internal Revenue Code Section 3306 are prohibited for Idaho unemployment insurance purposes. Each covered employer shall complete and submit an Idaho business registration form and the Department will assign to the covered employer a unique unemployment insurance account number. The covered employer must file quarterly reports under its assigned unemployment insurance account number. The workers of one (1) covered employer may not be reported using the assigned unemployment insurance account number of a different covered employer or related entity. Ref. Sections 72-1325 and 72-1315, Idaho Code. ( )

**012. -- 039. (RESERVED)**

**040. COMPROMISE OF PENALTY AND CIVIL PENALTY.**

Pursuant to Section 72-1354, Idaho Code, the Director or his authorized representative may, for good cause shown, compromise the amount of penalties owed on an employer account. An employer shall submit a request in writing for compromise of penalties, setting forth the reason(s) for the delinquency, and attaching any available evidence supporting the request. ( )

**01. Good Cause.** An employer has established good cause if the employer can show that one (1) of the following criteria has been met: ( )

**a.** The reason for the delinquency was beyond the reasonable control of the employer. Examples of circumstances that are beyond the reasonable control of the employer include, but are not limited to, the following: ( )

**i.** Departmental error, including but not limited to providing incorrect information to the employer or not furnishing proper forms in sufficient time to permit timely payment of contributions; ( )

**ii.** Death or serious illness or injury of the employer or the employer's accountant or members of their immediate families; ( )

**iii.** Destruction by fire or other casualty of the employer's place of business or business records; or ( )

**iv.** Postal service delays. ( )

**b.** The delinquency was due to circumstances for which the imposition of penalties would be inequitable. ( )

**c.** Good cause is also established in the case of an employer who has never received a status determination, who has never paid any contributions to the director, who voluntarily approaches the Department to inquire as to whether workers are engaged in covered employment, and the failure to pay contributions was due to the employer's good faith belief that the employer was not a covered employer pursuant to the provisions of Idaho Employment Security Law. Ref. Section 72-1354, Idaho Code. ( )

**041. -- 050. (RESERVED)**

**051. ROUNDING WAGES REPORTED ON CONTRIBUTION REPORT TO NEXT LOWER DOLLAR AMOUNT.**

The total wages and taxable wages shown on the contribution report which are to be used in computing contributions due shall be reduced to the next lower dollar amount. Ref. Section 72-1349, Idaho Code. ( )

**052. -- 055. (RESERVED)**

**056. APPLICATION OF PAYMENTS ON DELINQUENT ACCOUNTS.**

Unless otherwise specified and approved by the Department, apply payment as follows: ( )

**01. First Application.** First, credit such payment in satisfaction of interest due for the calendar quarter or period most delinquent in point of time; ( )

**02. Second Application.** Next, credit the remainder of such payment in satisfaction of penalty due for such calendar quarter or period most delinquent in point of time; ( )

**03. Third Application.** Next, credit the remainder of such payment in satisfaction of contributions due for the calendar quarter or period most delinquent in point of time; ( )

**04. Subsequent Applications.** Such applications shall be applied in a like manner for each remaining delinquent quarter. Any remaining credit shall be applied to interest on civil penalties then to civil penalty due until the amount of payment is exhausted. Ref. Section 72-1354, Idaho Code. ( )

**057. -- 060. (RESERVED)**

**061. DEFINITIONS.**

The definitions listed in IDAPA 09.01.35, "Unemployment Insurance Tax Administration Rules," Section 011, and the following are applicable to the UI Compliance Bureau. ( )

**01. Tolerance Amount.** A tolerance of four dollars and ninety-nine cents (\$4.99) is established in connection with collection of amounts due; and under normal circumstances, no delinquency or credit will be issued or carried on the books of accounts for this amount or less. Ref. Section 72-1349, Idaho Code. ( )

**02. Wages.** The term "wages" includes all remuneration from whatever source, paid or given in exchange for services performed or to be performed, including the cash value of remuneration in any medium other than cash. "Wages" in covered employment, and subject to unemployment insurance reporting, include, but are not limited to: ( )

**a.** Commissions, bonuses, draws, distributions, dividends and any other forms or types of payments made by corporations or other similar entities if paid in exchange for services; ( )

**b.** Bonuses, prizes, and gifts given to an employee in recognition of services, sales, or production; ( )

**c.** Commissions for past services in covered employment; ( )

**d.** Remuneration paid to corporate officers which is paid in exchange for services performed or to be performed for or on behalf of the corporation; ( )

**e.** Salary advances against commissions; ( )

**f.** All forms of profit sharing for services rendered unless specifically exempt under Section 72-1328, Idaho Code; ( )

**g.** Excess travel or employer business allowances over actual expense, or over the federal allowance per diem rate for the area of travel, unless returned to the employer; ( )

- h.** Vacation or “idle-time” pay, no matter when paid; ( )
- i.** Personal expense reimbursement, not gifts, i.e., clothing, family expenses, rent. ( )
- j.** The director or his authorized representative shall determine the fair market value of any other remuneration, regardless of its classification, form, or label, which is paid to a worker in exchange for services. In making such determination, consideration will be given to the prevailing wage for similar services. Ref. Section 72-1328, Idaho Code. ( )
- 03. Exclusions From Wages.** The term “wages” described in Section 72-1328, Idaho Code, does not include the following: ( )

  - a.** Prizes or gifts for special occasions which are expressions of good will; ( )
  - b.** Bonuses paid for signing a contract; ( )
  - c.** Fees paid to participate periodically in meetings of boards of directors unless exceedingly high; i.e., amounts comparable to other employers in the same industry, of relatively the same size; ( )
  - d.** Drawings or advances by partners of a partnership, or by members of a limited liability company treated for federal tax purposes as a partnership or sole proprietorship; ( )

    - e.** Rental charge for personal equipment provided by the employee on the job: if ( )

      - i.** There is a rental agreement; and ( )
      - ii.** The worker has received a reasonable wage for services performed; and ( )
      - iii.** The fees are held separately on the employer’s records. ( )
    - f.** Stock or membership interests issued for purposes other than services performed or to be performed; ( )
    - g.** Reimbursement for actual employee expense, or business allowance arrangements with employees that requires them: ( )

      - i.** To have paid or incurred reasonable job related expenses while performing services as employees; and ( )
      - ii.** To account adequately to the employer for these expenses; and ( )
      - iii.** To return any excess reimbursement or allowance. ( )
    - h.** Payments for employee travel expenses, provided: ( )

      - i.** Payments are job related expenses while performing services; and ( )
      - ii.** Payments do not exceed actual expenses or the federal allowance per diem rate for the area of travel; and ( )
      - iii.** Records for days of travel pertaining to per diem payments are verifiable. ( )
    - i.** Employee fringe benefits as set forth in Section 132 of the Internal Revenue Code, which are excluded from an employee’s gross income and which are not subject to federal unemployment taxes. ( )
    - j.** Noncash payment to farmworkers. Noncash payments for farm work will be excluded from wages if they are “de minimis” in relation to the amount of cash wages paid to the farmworkers, or are not intended to be

treated as the cash equivalent of wages, or as the cash payment of wages. Ref. Section 72-1328, Idaho Code. ( )

- k. Payments of any kind by a partnership to its partner or by a sole proprietorship to its owner. ( )

**04. Treatment of Limited Liability Companies.** For purposes of state unemployment tax coverage, a limited liability company will have the same status as it may have elected for federal tax purposes, or as that status may be determined or required by the federal government, subject to the provisions of Subsections 061.02 and 061.03. Any member of a limited liability company that has elected to be treated as a corporation for federal tax purposes shall be treated as a corporate officer for state Employment Security Law purposes. ( )

**05. Domestic Employment.** Domestic employment is defined as work performed in the operation or maintenance of a private home, local college club, or local chapter of a college fraternity or sorority, as distinguished from services as an employee in pursuit of an employer's trade, occupation, profession, enterprise, or vocation. In general, domestic employment "in the operation or maintenance of a private home, local college club, or local chapter of a college fraternity or sorority" includes, but is not limited to, services rendered by cooks, waiters, butlers, maids, janitors, handymen, gardeners, housekeepers, housemothers, and in-home caregivers. Ref. Section 72-1315, Idaho Code. ( )

**06. Casual Labor.** Casual labor is labor that meets the requirements of Section 72-1316A(19), Idaho Code. The term, "services not in the course of the employer's trade or business," refers to services that do not promote or advance the trade or business of the employer. ( )

**07. Willfully.** When applied to the intent with which an act is done or omitted, willfully implies simply a purpose or willingness to commit the act or make the omission referred to. It does not require any intent to violate law, in the sense of having an evil or corrupt motive or intent. It is more nearly synonymous with "intentionally," "designedly," "without lawful excuse," and therefore not accidental. Ref. Section 72-1372 and 72-1351A, Idaho Code. ( )

**062. SUBSTANCE VS. FORM.**  
In recognizing covered employers, covered employment and in classifying wages, the Department shall examine both the substance and the form of the arrangement, contract, transaction or event, but more consideration shall be given to the substance of the arrangement, contract, transaction or event than to the form. If it is determined that true economic substance is lacking or the operations, accounting practices and records do not reflect the purported form or legal status, the Department shall, regardless of the form, determine proper coverage or classification. ( )

**063. -- 080. (RESERVED)**

**081. EMPLOYER RECORDS.**  
Each person hiring one (1) or more individuals, whether or not such employment is sufficient to create the status of a covered employer, shall maintain records for five (5) years to show the information hereinafter indicated. Ref. Section 72- 1337, Idaho Code. ( )

**01. Required Information.** Such records shall show with respect to each employee unless the Department has ruled that the services do not constitute covered employment: ( )

- a. Full name and home address of worker; ( )
- b. Social Security account number; ( )
- c. The place of work within this State; ( )
- d. Date on which employee was hired, rehired, or returned to work after temporary or partial layoff; ( )
- e. Date employment was terminated; whether the termination occurred by voluntary action of the individual and the reason given, or by discharge or death, and the reason for discharge; ( )



f. Wages paid for employment in each pay period and total wages for all pay periods ending in each quarter of the year, showing separately: money wages; the cash value of other remuneration; and the amount of all bonuses or commissions. ( )

**02. Travel or Employee Business Expenses.** Amounts paid to employees as allowances or reimbursement for travel and employee business expenses and the amounts of such expenditures actually incurred and accounted for by them. ( )

**03. Records to Be Made Available.** The records to be made available to the director or his authorized representative, in accordance with the provisions of Section 72-1337, Idaho Code, shall include all of the business records, such as journals, ledgers, time books, minute books, or any other records or information which would tend to establish the existence of and/or amounts paid for services performed, whether or not in covered employment, and for information necessary to assist in or enable collection efforts or any other investigations conducted by the Department. ( )

**082. -- 095. (RESERVED)**

**096. EMPLOYER STATUS REPORT.**

**01. Status Report.** Each employer shall report on such form or any online system as may be prescribed and furnished, such information as may be necessary to make an initial or subsequent determination of status under the Idaho Code. Said reports shall be signed by the employer, or on behalf of the employer by a duly authorized representative for such purpose. Ref. Section 72-1337, Idaho Code. ( )

**02. Exceptions.** The provisions of this Rule do not apply to any employer for whom the services performed do not, by virtue of the provisions of Section 72-1316, Idaho Code, constitute covered employment, except that the director reserves the right, in his discretion, to require any such employer at any time to make the reports mentioned in Section 096 of this rule. Ref. Section 72-1337, Idaho Code. ( )

**097. -- 105. (RESERVED)**

**106. CLAIMS OF EXEMPTION.**

Any employer claiming that services performed for the employer or remuneration paid by the employer does not constitute covered employment or covered wages, as defined in Section 72-1316 and 72-1328, Idaho Code, shall make a report to the Department of Labor of all pertinent facts upon which said claim is based, which report needs to be signed by the person making the claim, if he is the employer, or on behalf of the employer by an authorized representative. Ref. Section 72- 1337, Idaho Code. ( )

**107. REMUNERATION PAID CONSTITUTES BOTH TAXABLE WAGES AND EXCLUDED AMOUNTS.**

When remuneration paid includes payment for other than wages for services performed in covered employment, the employer's records must account for wages and other remuneration separately. When this distribution is not shown on the records, the employee's entire remuneration will be deemed to be wages. Ref. Section 72-1337, Idaho Code. ( )

**108. ELECTION TO EXEMPT CORPORATE OFFICERS.**

A corporation may elect to exempt one (1) or more corporate officers from coverage by registering with the Department each qualifying corporate officer it elects to exempt pursuant to Section 72-1352A, Idaho Code. Registrations in the format prescribed by the Department made on or before December 15th shall become effective on the first day of the next calendar year and remain effective for at least two (2) consecutive calendar years. Exemptions are not retroactive and no refund or credit shall be given for contributions paid before the effective date of the exemption. Exemptions continue to remain in effect after two (2) consecutive calendar years unless the exemption is terminated according to Subsection 108.04 of this rule or coverage is reinstated according to Subsection 108.05 of this rule. ( )

**01. Public Company Election.** A public company, as defined in Section 72-1352A, Idaho Code, may

elect to exempt any bona-fide corporate officer who: ( )

- a. Is voluntarily elected or voluntarily appointed in accordance with the articles of incorporation or bylaws of the corporation; ( )
- b. Is a shareholder of the corporation; ( )
- c. Exercises control in the daily management of the corporation; and ( )
- d. Does not perform manual labor as a primary work responsibility. ( )

**02. Election for Corporations That Are Not Public Companies.** A corporation that is not a public company as defined in Section 72-1352A, Idaho Code, may exempt from coverage any bona-fide corporate officer who: ( )

- a. Is a shareholder of the corporation; ( )
- b. Voluntarily agrees to be exempted from coverage; and ( )
- c. Exercises substantial control in the daily management of the corporation. ( )

**03. Election to Exempt Not Applicable.** The election to exempt does not apply to corporate officers covered by Sections 72-1316A, 72-1322D and 72-1349C, Idaho Code. ( )

**04. Termination of Exemption.** A corporate officer's exemption terminates upon the corporate officer's failure to satisfy the election criteria of Section 72-1352A, Idaho Code. It is the responsibility of the corporation to notify the Department in writing in a format required by the Department when an exempt corporate officer no longer meets the election criteria. A corporation is responsible for any taxes, penalties, and interest due after the date the exemption is terminated or should have been terminated. ( )

**05. Reinstatement of Coverage.** A corporation may elect to reinstate coverage for one (1) or more corporate officers previously exempted. Reinstatement requires written notice from the corporation to the Department in a format required by the Department. Reinstatement requests received by the Department on or before December 15th become effective the first day of the calendar year following the end of the exemption's initial two (2) year effective date. Coverage shall not be reinstated retroactively. ( )

**06. Definitions.** For purposes of this chapter: ( )

a. "Bona-fide corporate officer" is defined as any individual empowered in good faith by stockholders or directors, in accordance with the corporation's articles of incorporation or bylaws, to discharge the duties of a corporate officer. ( )

b. "Exercise substantial control in the daily management of the corporation" is defined as when an individual makes managerial decisions over a business function or functions that have some effect on the entire corporation. This includes the authority to hire and fire, to direct other's activities in the corporation, or the responsibility to account for and pay over taxes or debts incurred by the corporation. ( )

**07. Services in Employment.** Unless specifically exempted, services performed by corporate officers are considered services in employment and are covered for purposes of unemployment insurance. ( )

**109. -- 110. (RESERVED)**

**111. SERVICES PERFORMED PART IN COVERED EMPLOYMENT AND PART IN EXCLUDED EMPLOYMENT.**

When wages paid cover services performed both in covered employment and excluded employment, the employer's records must show the hours and wages for covered employment and also hours and wages for excluded employment. When this distribution is not shown on the records, the employee's entire wage will be deemed to have been earned in

covered employment. Ref. Section 72-1337, Idaho Code. ( )

**112. DETERMINING STATUS OF WORKER.**

**01. Determining if Worker Is an Employee.** In making a determination as to whether a worker is performing services in covered employment, it shall be determined whether the worker is an employee. To determine whether a worker is an employee, the following factors may be considered: ( )

**a.** The way in which the business entity represented its relationship with the worker prior to the investigation or litigation, including representations to the Internal Revenue Service; ( )

**b.** Statements made to the Department; ( )

**c.** Method of payment to the worker, in particular whether federal, state, and FICA taxes are withheld from paychecks; and ( )

**d.** Whether life, health, or other benefits are provided to the worker at the business entity's expense. ( )

**02. Determining if Worker Is an Independent Contractor.** If it cannot be determined that a worker is an employee pursuant to Subsection 112.01 above, then a determination shall be made whether the worker is an "independent contractor" pursuant to the terms of Section 72-1316(4), Idaho Code. For the purposes of that section and these rules, an independent contractor is a worker who meets the requirements of both Sections 72-1316(4)(a) and (b), Idaho Code. ( )

**03. Proving Worker Is Free from Control or Direction in His Work.** To meet the requirement of Section 72-1316(4)(a), Idaho Code, the alleged employer must prove that a worker has been and will continue to be free from control or direction in the performance of his work, both under his contract of service and in fact. The following factors may be considered in this determination: ( )

**a.** Whether the alleged employer has control over the details of the work, the manner, method or mode of doing the work, and the means by which the work is to be accomplished, but without reference to having control over the results of the work. ( )

**b.** The freedom from direction and control must exist in theory (under a contract of service) and in fact; and ( )

**c.** The employer must demonstrate that it lacked a right to control the worker. ( )

**04. Proving Worker Is Engaged in Independently Established Business.** To meet the requirement of Section 72-1316(4)(b), Idaho Code, it must be proven that a worker is engaged in an independently established trade, occupation, profession or business. The following factors are significant and shall be considered in making this determination, although no single factor is regarded as controlling: ( )

**a.** The level of skill required to perform the work; ( )

**i.** A worker who performs routine tasks requiring little or no training is indicative of the worker's status as an employee. ( )

**ii.** A worker who performs work requiring skills marketable as a trade, occupation, profession or business, such as an electrician, attorney, physician, or CPA, is indicative of the worker's status as an independent contractor. ( )

**iii.** A worker who performs work requiring special licensing or compliance with regulatory requirements is indicative of the worker's status as an independent contractor. ( )

**iv.** A worker who receives all or substantially all of the worker's job training from the alleged

employer is indicative of the worker's status as an employee. ( )

**b.** The extent to which the worker's services are an integral part of the alleged employer's business; ( )

i. A worker who performs the primary type of work that the alleged employer is in business to provide to its customers or clients is indicative of the worker's status as an employee. For example, an automotive repair business hires an additional mechanic to help in its service repair shop. Since the work provided by the worker is the primary type of work the automotive repair business provides to its customers, the work is indicative of the worker's status as an employee. ( )

ii. A worker who performs a specific job that is secondary to an integral part of the employer's business is indicative of the worker's status as an independent contractor. For example, if a manufacturing business requiring routine electrical work within its manufacturing facility hires an independent electrical company to provide that service, the electrical work performed is indicative of the worker's status as an independent contractor. ( )

iii. A worker who supervises the alleged employer's employees is indicative of the worker's status as an employee. ( )

iv. If the success of a business depends to an appreciable degree upon the performance of certain services, the worker performing those services is indicative of that worker's status as an employee. ( )

v. If a worker is not required to work solely for the alleged employer and there is a separate contractual relationship for each job that ends upon the completion of that job, the work is indicative of the worker's status as an independent contractor. ( )

**c.** The permanency of the relationship; ( )

i. The longer a worker works solely for a single alleged employer, the more indicative it is of the worker's status as an employee. ( )

ii. A worker who makes the worker's services available to the general public for hire on a regular and consistent basis is indicative of the worker's status as an independent contractor. ( )

iii. A worker whose hours worked are regularly scheduled, rather than sporadic or occasional, is indicative of the worker's status as an employee. ( )

iv. Work with a specific ending date that ends the working relationship between the worker and the alleged employer is indicative of the worker's status as an independent contractor. ( )

v. Work that is open ended allowing the worker to continue working for the same alleged employer as long as performance standards are met, is indicative of the worker's status as an employee. ( )

**d.** A worker's investment in facilities and equipment; ( )

i. A worker who is reimbursed for work-related purchases, materials or supplies, or is furnished work-related materials or supplies by the alleged employer is indicative of the worker's status as an employee. ( )

ii. A worker who uses the tools and equipment of the alleged employer is indicative of the worker's status as an employee. ( )

iii. A worker's significant investment in tools and equipment compared to the cost of the tools and equipment provided by the alleged employer is indicative of the worker's status as an independent contractor. ( )

iv. A worker who is financially responsible to the alleged employer for damage to equipment or tools

is indicative of the worker's status as an independent contractor. ( )

v. A worker's investment in physical facilities used by the worker in performing services is indicative of the worker's status as an independent contractor. ( )

vi. A worker's lack of investment in physical facilities indicating a dependence on the alleged employer for whom the worker's services are performed is indicative of the worker's status as an employee. ( )

e. Whether a worker is customarily engaged in an outside trade, occupation, profession, or business providing the same type of services the worker provides for the alleged employer engaging his services; ( )

i. A worker who provides one (1) type of service for an alleged employer, while providing the same type of service to others for hire, is indicative of the worker's status as an independent contractor. ( )

ii. A worker who provides one (1) type of service for an alleged employer, while providing a different type of service to others for hire, is indicative of the worker's status as an employee of the alleged employer. ( )

iii. A worker who advertises independently via yellow pages, business cards, web pages, or other types of media is indicative of the worker's status as an independent contractor. ( )

f. A worker's opportunities for profit and loss; ( )

i. A worker required to carry business related expenses such as insurance, bonding, or workers compensation coverage is indicative of the worker's status as an independent contractor. ( )

ii. A worker's ability to earn a profit by performing work more efficiently or suffer a loss because of the work performed is indicative of the worker's status as an independent contractor. ( )

iii. A worker who is subject to a risk of economic loss due to significant investments or a bona fide liability for expenses is indicative of the worker's status as an independent contractor. ( )

g. Other factors when viewed fairly in light of all the circumstances that may or may not indicate that the worker was engaged in an independently established trade occupation, profession, or business. These factors may include control of the premises, right to determine hours, or who sets the rate of pay. ( )

**05. Meeting Criteria for Covered Employment.** A worker who meets one (1), but not both, of the tests in Subsections 112.03 and 112.04 above shall be found to perform services in covered employment. ( )

**06. Evidence of Contractual Liability for Termination.** For purposes of making a determination under Section 72-1316(4), Idaho Code, and this regulation, the party alleging that summary termination by either party would result in contractual liability must present some evidence upon which to base such allegation. Ref. Section 72-1316(4), Idaho Code. ( )

**113. -- 130. (RESERVED)**

**131. FARM COMMODITY OWNERSHIP.**

In determining if the farm operator-processor produced more than fifty percent (50%) of the commodities being processed, the following apply: ( )

**01. Quantity.** It will be determined on a quantity basis where the farm operator processes only one (1) commodity. ( )

**02. Wages.** It will be determined on the basis of the relationship between wages paid for processing commodities raised by the farm operator-processor and total wages paid for processing where the farm operator processes several commodities. Wages paid for processing each commodity will be determined. The proportionate

share of such wages paid for processing that portion of the commodity raised by the farm operator-processor will be ascertained on the basis of the percentage of such commodity which was produced by the farm operator. This will be done for each commodity processed so as to ascertain total wages paid for processing commodities produced by the farm operator-processor. If such total is more than fifty percent (50%) of the total wages paid for processing all commodities, the activity will be exempt but if it is fifty percent (50%) or less, it will not be exempt. Ref. Section 72-1304, Idaho Code. ( )

**132. STATUS.**

**01. Status Information Required.** To determine the taxable status of an employer, detailed information regarding the business activities of any person engaged in business in Idaho shall be submitted as required, including articles of incorporation, articles of organization, minutes of boards of directors, financial reports, partnership agreements, number of employees, wages paid, employment contracts, income tax records, and any other records or other information which may tend to establish such person's status. Ref. Section 72-1337, Idaho Code. ( )

**02. Notification to Liable Employers.** An employer shall be notified in writing of any determination as to its liability for contributions, or its status as a covered employer if a formal determination was made after the employer questioned its status. The determination shall be in the form required by IDAPA 09.01.01.27.01, and shall become final if no timely appeal is taken to an appeals examiner pursuant to the Rules of Administrative Procedure of the Department of Labor. ( )

**03. Employer Quarterly Report Forms.** Employers who are liable to pay tax contributions, or who have elected a cost reimbursement option in lieu of tax contributions, shall submit quarterly report forms in any form or medium designated by the director or his authorized representative. Ref. Section 72-1349, Idaho Code. ( )

**04. Update Requirements.** Covered employers shall furnish the Department with pertinent status data when new or additional information is available. Ref. Section 72-1337, Idaho Code. ( )

**133. (RESERVED)**

**134. PROFESSIONAL EMPLOYER ORGANIZATIONS.**

A professional employer organization shall fully comply with the requirements of the Professional Employer Recognition Act, Chapter 24, Title 44, Idaho Code in order to be eligible for any transfers of experience rating as allowed by Section 72-1349B, Idaho Code. ( )

**01. Methods of Reporting.** To report the wages and employees covered by the professional employer arrangement between a professional employer and client, professional employers and their clients shall make reports to the Department in one (1) of the following ways, subject to the conditions in Subsections 134.02 through 134.06 of this rule: ( )

**a.** Report the workers included in the professional employer arrangement under the employer account number of the professional employer and transfer the rate of the client to the professional employer; or ( )

**b.** Report the workers included in the professional employer arrangement under the employer account number of the client without an experience rate transfer. Ref. Section 72-1349B, Idaho Code. ( )

**02. Joint Transfer of Experience Rate.** In order to effect a transfer of a client's experience rate into the experience rate of a professional employer organization, both the client and the professional employer organization shall jointly apply for the transfer of the experience rate within the same timeframes as required of employers by Section 72-1351(5), Idaho Code, from the date of the contract entered into between the professional employer organization and the client required by Section 44-2405, Idaho Code. Failure to submit a timely joint request for transfer of experience rate shall result in the professional employer organization reporting wages for the client under the employer account number of the client. Ref. Section 72-1351(5), Idaho Code. ( )

**03. Partial Transfers of Experience Rate Prohibited.** In the event that a client and a professional employer organization jointly apply to transfer the experience rate of the client into that of the professional employer,

the client's entire experience rate and factors of experience rate shall be transferred into that of the professional employer, and no partial transfers of experience factors or the experience rate shall be allowed. Ref. Section 72-1349B, Idaho Code. ( )

**04. Partial Reporting of Workers.** If some of the client's workers are included in the professional employer arrangement and some are not included, and the professional employer organization and the client elect to report the workers included in the professional employer arrangement under the employer account number of the client, then only one (1) quarterly report shall be remitted to the Department, which shall list or include all the client's workers whether or not included in the professional employer arrangement. Ref. Section 72-1349B, Idaho Code. ( )

**05. Combined Wages or Services for Purposes of Coverage.** If a client employer has employees or employment, or both, that does not independently meet the coverage or threshold requirements necessary to constitute covered employment, such employees, services or employment shall nonetheless be deemed to meet the coverage requirements of the Employment Security Law if, in combination with other employees, employment or services of such other employees of the professional employer organization or any of its clients, such wages, services or employees do jointly meet coverage requirements. ( )

**135. -- 165. (RESERVED)**

**166. FIELD OPERATIONS CONTROL.**

When circumstances dictate, and as a result of nonpayment of liabilities, the employer shall be notified by mail to the last known address of lien proceedings against the employer's interests, with an explanation of the amounts due, and the accrual of interest at the proper rate until the lien is satisfied. Ref. Section 72-1360, Idaho Code. ( )

**01. Limitation for Commencing Administrative Procedures.** The director may commence an administrative proceeding for purposes of establishing a tax liability, or otherwise to enforce the provisions of Section 72-1349, Idaho Code, by issuing a determination at any time within five (5) years from the due date of a quarterly report or the date a quarterly report is filed, whichever is later, subject to tolling pursuant to Section 72-1349, Idaho Code. ( )

**a. Notification of Audits.** Employers shall be notified as soon as practicable of an impending payroll records audit for tax liability purposes. This shall allow time in which to agree as to a convenient time and place for audit. Ref. Section 72-1337, Idaho Code. ( )

**b. Frequency of Audits.** The frequency of audits or inspections of an employer's records to ensure compliance with the law and Department rules shall be based on the following criteria: ( )

**i.** On the basis of random selection and other selection criteria in accordance with federal requirements; ( )

**ii.** As a result of information received from any source, provided that the information received is of such a nature that it would be reasonable to conduct an audit or inspection of records as a result of that information; or ( )

**iii.** As a result of a previous audit, if the business practices or records of the employer are of such a nature that it would be reasonable for a Department employee to re-inspect or re-audit the records to ensure future compliance with the law. Ref. Section 72-1337, Idaho Code. ( )

**02. Execution Against Assets.** The Department of Labor, when the situation warrants, shall levy upon or execute against any real or personal property, both tangible and intangible, in which an indebted person has an interest, including any offsets as allowed by Section 67-1026, Idaho Code. Ref. Section 72-1360, Idaho Code. ( )

**03. Relief of Indebtedness.** Neither the full running of the statute of limitations nor the writing off of the account as uncollectible relieves an employer of tax indebtedness. Ref. Section 72-1364, Idaho Code. ( )

**167. -- 185. (RESERVED)**

**186. ACCOUNTING AND DELINQUENCY CONTROL.**

Overpayments on employer accounts may be refunded without written application by the employer. Credits resulting from overpayments or adjustments to an employer's account shall be refunded periodically unless such credit is applied to a subsequent balance due. Ref. Section 72-1357, Idaho Code. ( )

**01. Erroneous Wage Reports.** An employer submitting an erroneous report of employee wages resulting in payment of unearned unemployment insurance benefits shall have said benefit payments subtracted from any refund due that employer, if such employer benefited from the unearned benefit payments. Ref. Section 72-1372, Idaho Code. ( )

**02. Notification of Underpayments.** Employers shall be notified periodically of any taxes, penalties, or lien interest due on their tax account. Ref. Section 72-1349, Idaho Code. ( )

**03. Cancellation of Refund Warrants.** Refund warrants, outstanding after the validity date, shall be canceled, stop-payment procedures initiated, and then reissued only upon completion of an affidavit for the replacement of the lost or destroyed warrant. Ref. Section 72-1357, Idaho Code. ( )

**187. -- 220. (RESERVED)**

**221. TRANSFER OF EXPERIENCE RATING.**

Upon request, employers shall be informed of the requirements for transferring an experience rating record. Notification shall be issued to interested parties when an experience rating record transfer request is made. Ref. Sections 72-1351 and 72-1351A, Idaho Code. ( )

**01. Mandatory Transfer of Rate.** An experience rating record transfer shall be mandatory if there is a transfer of trade or business and ownership or management or control is substantially the same between the predecessor and successor. The parties in interest shall be notified of such transfer of experience as determined from the facts applicable to the case. The determination shall be in the form required by IDAPA 09.01.01.027.01, and become final if no appeal is taken to an appeals examiner pursuant to the Rules of Administrative Procedure of the Department of Labor. ( )

**02. Partial Experience Rate Transfers.** The following method is used to compute the pro-rata share of the experience rate account that is to be transferred from the predecessor to a successor. The pro-rata share is determined by dividing the gross payroll associated with the portion of the business acquired by the total gross payroll for the entire business operations for the same time period. The time period upon which this computation is based is the four (4) most recently completed quarters as reported by the predecessor prior to the date of acquisition or change in entity. ( )

**03. Continued Predecessor Employment for Liquidation.** When a total transfer of experience rating record has been completed and it is found that the predecessor employer continues to have employment in connection with the liquidation of his business, such employer shall continue to pay contributions at the assigned rate for the period of liquidation but not to extend beyond the balance of the rate year. Ref. Section 72-1351, Idaho Code. ( )

**04. Management or Ownership or Control Substantially the Same.** For the purposes of Subsection 72-1351A, Idaho Code, in determining whether the ownership or management or control of a successor is substantially the same as the ownership or management or control of the predecessor factors to be considered include, but are not limited to, the extent of policy making authority, the involvement in daily management of operations, the supervision over the workforce, the percentage of ownership of shares or assets, and the involvement on boards of directors or other controlling bodies. ( )

**05. Wage Paid by Predecessor.** The successor employer may use wages paid by the predecessor employer to arrive at the wage base for purposes of calculating taxable wages only when the experience rate of a predecessor employer has been transferred to a successor employer. Ref. Sections 72-1349(1), 72-1351(5), and 72-1350(8), Idaho Code. ( )



**222. -- 230. (RESERVED)**

**231. EXPERIENCE RATING -- QUALIFYING PERIOD.**

When an eligible employer ceases to have covered employment for a period of six (6) consecutive quarters or more, they must complete another qualifying period in order to again be eligible for consideration for a reduced contribution rate. Ref. Section 72-1319, Idaho Code. ( )

**232. -- 240. (RESERVED)**

**241. BOARD, LODGING, MEALS.**

When board, lodging, meals, or any other payment in kind considered as payment for services performed by an employee constitute a part of wages or wholly comprise an employee's wages, the value of such board, lodging, or other payment shall be determined as follows: ( )

**01. Cash Value.** If a cash value for such board, lodging, or other payment is agreed upon in any contract of hire, the amount so agreed upon shall be used provided it is a reasonable, fair market value. If there is no agreement, or if the contract of hire states an amount less than a reasonable, fair market value, the Department of Labor shall determine the reasonable or fair market value to be used. Ref. Section 72-1328, Idaho Code. ( )

**02. Meals and Lodging Not Included in Gross Wages.** The value of meals and lodging furnished by an employer to the employee will not be included in the employee's gross income if it meets the following tests: ( )

**a.** The meals or lodging are furnished on the employer's business premises; ( )

**b.** The meals or lodging are furnished for the employer's convenience; and ( )

**c.** In the case of lodging (but not meals), the employees must be required to accept the lodging as a condition of their employment. This means that they must accept the lodging to allow them to properly perform their duties. ( )

**d.** In order to exclude the value of lodging from an employee's gross wages, the employer must show that the wages paid to the employee for services performed meets the prevailing wage for those services. If the employer's records do not show or establish that the employee received the prevailing wage for services performed, then the reasonable or fair market value of the lodging will be included in the employee's gross income as wages. Ref. Section 72-1328, Idaho Code. ( )

**03. Meals or Lodging for Employer Convenience.** Meals or lodging furnished will be considered for the employer's convenience if the employer has a substantial business reason other than providing additional pay to the worker. A statement that the meals or lodging are not intended as pay is not enough to prove that either meals or lodging are furnished for the employer's convenience. Ref. Section 72-1328, Idaho Code. ( )

**04. Subsistence Remuneration.** In the case of employees who receive remuneration in the form of subsistence, such as groceries, staples, and fundamental shelter, the fair value of such subsistence will be determined by the Director. Ref. Section 72-1328, Idaho Code. ( )

**242. -- 255. (RESERVED)**

**256. DETERMINATION OF FAIR VALUE OF REMUNERATION FOR PERSONAL SERVICES.**

When the amount paid to an employee by an employer includes remuneration for other than personal services such as equipment use, travel costs, etc., the Director shall determine the fair value of the remuneration for the employee's personal services. In making such determination, the Director shall consider the wages specified in the contract of hire, the prevailing wages for similar work under comparable conditions, and other pertinent factors. The wages so determined by the Director shall be reported by the employer. Ref. Section 72-1328, Idaho Code. ( )

**257. -- 261. (RESERVED)**

**262. DETERMINATION OF PROPER QUARTER IN WHICH TO ASSIGN AND REPORT WAGES.**

**01. Wage Assignment to Proper Calendar Quarter.** Wages paid shall be assigned to the calendar quarter in which the wages were: ( )

**a.** Actually paid to the employee in accordance with the employer's usual and customary payday as established by law or past practice; or ( )

**b.** Due the employee in accordance with the employer's usual and customary payday as established by law or past practice but not actually paid on such date because of circumstances beyond the control of the employer or the employee; or ( )

**c.** Not paid on the usual or customary payday as established by law or past practice but set apart on the employer's books as an amount due and payable or otherwise recognized as a specific and ascertainable amount due and payable to the worker in accordance with an agreement or contract of hire under which services were rendered. Ref. Section 72-1367, Idaho Code. ( )

**02. Draws and Advances on Wages.** Payments to employees made prior to regular or established paydays will be assignable and reportable during the quarter in which they would have been paid unless a practice is established whereby all employees or a class of employees are given an opportunity to take a "draw" by which such action, another "regular" payday appears to have been created. ( )

**03. Judgments of Wages.** Amounts received as a result of labor relations awards or judgments for back pay, or for disputed wages, constitute wages and will be reported in the quarter or quarters in which the award or judgment has become final, after all appeals have been exhausted, or the quarter or quarters to which the court assigns the wages, if different. Ref. Section 72-1328, Idaho Code. ( )

**04. Awarded Damages Against Employers.** Amounts awarded to the claimant as a penalty or damages against the employer, other than for lost wages, do not constitute wages. Ref. Section 72-1328, Idaho Code. ( )

**263. DETERMINATION OF REPORTABLE QUARTERS.**

An employer shall be covered for all four (4) quarters in the calendar year in which the employer becomes a covered employer as well as for all four (4) quarters in the succeeding calendar year. Employers are not required to file quarterly reports until meeting the coverage criteria pursuant to Section 72-1315, Idaho Code. Upon becoming a covered employer within a calendar year, the quarterly report(s) for the quarter(s) prior to the employer becoming covered shall be filed with the quarterly report for the quarter in which the employer became covered. Quarterly reports for the periods subsequent to coverage shall be filed when due after the end of each quarter. Ref. Sections 72-1315 and 72-1337, Idaho Code. ( )

**264. -- 999. (RESERVED)**

**09.02.01 – RULES OF THE DISABILITY DETERMINATIONS SERVICE**

**000. LEGAL AUTHORITY.**

These rules are promulgated under Section 72-1333, Idaho Code. ( )

**001. SCOPE.**

These rules govern time limits for submission of invoices by vendors for payment for services. ( )

**002. (RESERVED)**

**003. ADMINISTRATIVE APPEALS.**

There is no administrative appeal from any proceedings brought pursuant to this chapter. ( )

**004. -- 009. (RESERVED)**

**010. DEFINITIONS.**

**01. Consultative Examinations.** Consultative examinations include physical and mental examinations, x-rays, laboratory tests, and special diagnostic studies from qualified sources. ( )

**02. Medical Evidence of Record.** Medical evidence of record includes medical history reports, medical opinions, treatment records, copies of laboratory reports, prescriptions, ancillary tests, x-rays, operative and pathology reports, consultative reports, and other technical information used to document disability claims. ( )

**03. Travel.** Travel includes costs associated with applicants, beneficiaries, recipients, and other authorized individuals in connection with attending consultative examinations or disability hearings by commercial carrier (air, rail, taxi, shuttle, or bus), or privately owned vehicles. ( )

**04. Interpretive Services.** Interpretive services include authorized contracted interpreters for individuals with limited English proficiency or requiring language assistance for a consultative examination or disability hearing. ( )

**011. -- 021. (RESERVED)**

**022. PAYMENT FOR SERVICES.**

In order to receive payment for services provided, submission of bills must be within one year from date of service. This includes consultative examinations, medical evidence of record, travel, and interpretative services. ( )

**023. -- 999. (RESERVED)**

**09.05.03 – RULES FOR DETERMINING BARGAINING REPRESENTATIVES**

**000. LEGAL AUTHORITY.**

These rules are promulgated under Section 72-1382, Idaho Code, and Title 67, Chapter 52, Idaho Code. ( )

**001. SCOPE.**

The rules govern all proceedings before the Department brought pursuant to Section 72-1382, Idaho Code, or concerning mediation proceedings brought pursuant to Section 72-1381, Idaho Code. IDAPA Sections 09.05.03.011, 09.05.03.012, 09.05.03.013, and 09.05.03.014 relate only to powers concerning determination of representation under Section 72-1382, Idaho Code, and for conciliation and mediation purposes under Section 72-1381, Idaho Code. ( )

**002. (RESERVED)**

**003. ADMINISTRATIVE APPEALS.**

There is no administrative appeal under this chapter. ( )

**004. -- 011. (RESERVED)**

**012. UNION AGREEMENTS AND INSULATED PERIOD.**

Once the contract becomes effective as a bar to an election, no petition will be accepted until the end of the period during which the contract is effective as a bar. A contract for a fixed period of more than three (3) years will bar an election sought by a contracting party during the life of the contract, but will act as a bar to an election sought by an outside party for only three (3) years following its effective date. A contract of no fixed period will not act as a bar at all. Petitions filed not more than ninety (90) days but over sixty (60) days before the end of the contract bar period will be accepted and can bring about an election, or if a petition is filed after a contract expires it will be accepted. The last sixty (60) days of the contract bar period is called an insulated period. During that time the parties to the existing contract are free to negotiate a new contract or to agree to extend the old one. If they do so, petitions will not be accepted until ninety (90) days before the end of the new contract bar period. ( )

**013. STRIKERS DEEMED EMPLOYEES.**

Strikers are deemed to be employees even though replaced by other workers for representation purposes only and may be entitled to vote in any election conducted within twelve (12) months after the commencement of the strike. ( )

**014. EMPLOYEE REPRESENTATION.**

**01. Petition or Union Representation.** Any employer, union, or employee may petition the Department to conduct an investigation and/or hearing to determine whether the majority of the employees of any given business wish union representation and what union they wish to be represented by. Such petition must fully set forth and allege the exact question concerning representation of employees in the collective bargaining unit. The request must fully state the name of the employer, the place of business, the type of business, the name of the labor organization or organizations involved; and if the request is made by the employer it must include a list of employees employed in said unit. ( )

**02. Requests Made by Unions.** If the request is made by a union, such union must submit written statements or authorization cards from at least thirty percent (30%) of those workers in the unit to establish there is such a question of representation, except in establishments having less than six (6) employees, in which case twenty-five percent (25%) of the employees involved will be deemed sufficient. A description of the bargaining unit must be given. ( )

**03. Collective Bargaining Unit.** When a question arises concerning representation of employees in a collective bargaining unit the Department will investigate in order to determine the wishes of the majority of the employees in said unit. ( )

**04. Hearings.** In any such investigation, a hearing may be held after giving due notice to all interested parties as provided for in the procedural rules of the Department. If as a result of such hearing or investigation the parties agree which union, if any, may properly represent them, a certification will be made and issued by the Director of the Department designating the union for bargaining purposes. If after such a hearing and/or investigation, there is any doubt as to the wishes of the majority of the employees employed in said unit, a time and place will be scheduled to permit the employees to vote by secret ballot. ( )

**05. Preparation of Ballot.** In all cases where a secret ballot is taken, the ballot must be prepared by the Department to permit a vote for or against representation by anyone named on the ballot. In case of two (2) or more

unions, a place must be provided for a vote against any union. ( )

**06. Waiver of Investigation and Hearing.** The investigation and hearing may be waived by consent of the parties pursuant to written stipulation by all parties involved, and a cross check may be conducted by representatives of the Department. Such cross check will be made by comparing the signatures or names appearing on the employer's payroll with signatures on authorization cards submitted by the union involved. At such cross check, no representatives will be permitted to be present except representatives of the Department. The Department may, at its discretion, also question individual employees. ( )

**07. Elections.** If it becomes necessary to conduct an election, such election will be held only after appropriate notice is posted by the department in a conspicuous place where the employees are employed. Whenever possible, the election will be held on the premises of the employer and at a time calculated to best permit all employees who are eligible to vote, and so far as possible at a time which will minimize the disruption of the employer's business. Such notice must be posted at least twenty-four (24) hours before the election and in those cases where, because of the nature of the shifts, a longer time is necessary, it shall be so given. Every effort will be made to hold the election reasonably soon after the twenty-four (24) hour period except in those exceptional cases. ( )

**08. Observers.** The parties involved may each designate and have present at the election only one (1) observer. Neither management nor union officials may act as observers. Employees having the right to hire or fire or to effectively recommend hiring or firing will be considered as management personnel of the employer and will not be permitted to vote at such election or to act as observers. No member of an employer's immediate family will be eligible to vote at such representation election or to act as an observer, or any principal stockholder owning ten percent (10%) or more of the company stock. ( )

**09. Voting Eligibility.** All employees in said bargaining unit on the payroll at the time the petition was received in the Department may vote. Regular part-time employees will be permitted to vote. Casual part-time employees or workers who are employed for a limited period will not be permitted to vote. ( )

**10. Challenging Eligibility.** Any interested party or representative of the Department may challenge the eligibility of any person to participate in the election for cause under these rules. The ballots of such challenged person will be impounded. Upon conclusion of the election and before the ballots are counted, the parties will be permitted to offer evidence in support of their contentions as to eligibility to vote, after which time a ruling will be made sustaining or overruling the objection. If overruled, the ballot will be placed in the ballot box. ( )

**11. Ballots.** Ballots prepared by the Department will set forth the question involved. One ballot will be given to each eligible voter. Such ballots are not to be signed by the voters. Voters will be requested to place an "X" in a square which will require only "YES" or "NO" votes. The ballot must be prepared to permit a vote against any representation. ( )

**12. Deauthorization of Union Representation.** A petition in a union shop for an election to determine whether there should be any union representation or not, may be filed with the Department. In such petition, it must be shown at least thirty percent (30%) or more of the employees in the unit covered by the agreement desire deauthorization. Only employees in the bargaining unit will be counted for this purpose subject to the provisions of Subsection 014.12. ( )

**13. Petition for Election.** The demand or petition set forth in Subsection 014.12 need not be in any particular form, but must comply with the procedural rules of the Department. No such election as set forth in Subsection 014.12 will be conducted among employees presently covered by a valid collective bargaining agreement, except when filed in accordance with the reopening or termination clause of such agreement. ( )

**14. Existing Collective Bargaining Agreement.** An existing collective bargaining agreement is a bar to any representation election except as provided for within Section 012. ( )

**15. Frequency of Election.** No election may be held in any bargaining unit or subdivision thereof within which a valid election was held in the preceding twelve (12) month period. ( )

**015. -- 999. (RESERVED)**