



**Terri Kondeff**  
**Director**

# Legislative Services Office Idaho State Legislature

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## MEMORANDUM

**TO:** Senators LAKEY, Ricks, Burgoyne and,  
Representatives HOLTZCLAW, Syme, Chew

**FROM:** Katharine Gerrity - Deputy Division Manager

**DATE:** August 03, 2021

**SUBJECT:** Temporary Rule

IDAPA 21.00.00 - Notice of Omnibus Rulemaking - Adoption of Temporary Rule - Docket No. 21-0000-2100

We are forwarding this temporary rule to you for your information only. No analysis was done by LSO. This rule is posted on our web site. If you have any questions, please call Katharine Gerrity at the Legislative Services Office at (208) 334-4845. Thank you.

Attachment: Temporary Rule

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# IDAPA 21 – IDAHO DIVISION OF VETERANS SERVICES

DOCKET NO. 21-0000-2100

## NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF TEMPORARY RULE

**EFFECTIVE DATE:** The effective date of the temporary rule being adopted through this omnibus rulemaking as listed in the descriptive summary of this notice is July 1, 2021.

**AUTHORITY:** In compliance with Section 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Sections 65-202; 65-204; 65-506, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting the temporary rule:

This temporary rulemaking adopts and republishes the following existing rule chapter previously submitted to and reviewed by the Idaho Legislature under IDAPA 21, rules of the Idaho Division of Veterans Services:

### **IDAPA 21**

- 21.01.06, *Rules for the Enforcement of the Veteran's Preference in Public Employment.*

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1)(a), (b), and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

This temporary rule is necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. This temporary rule implements the duly enacted laws of the state of Idaho, provides citizens with the detailed rules and standards for complying with those laws, and assists in the orderly execution and enforcement of those laws. The expiration of this rule without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by this rule.

**FEE SUMMARY:** This rulemaking does not impose a fee or charge.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary rule, contact Kevin Wallior 208-780-1308.

DATED this 1st day of July, 2021.

Kevin Wallior  
Management Assistant  
Idaho Division of Veterans Services  
351 Collins Road  
Boise, ID 83702  
Ph: 208-780-1308  
Fax: 208-780-1301

**21.01.06 – RULES FOR THE ENFORCEMENT OF THE VETERAN’S PREFERENCE  
IN PUBLIC EMPLOYMENT**

**000. LEGAL AUTHORITY.**

Section 65-506, Idaho Code, authorizes and directs the Idaho Division of Veterans Services to issue rules for the enforcement of Title 65, Chapter 5, Idaho Code. (7-1-21)T

**001. SCOPE.**

These rules contain procedures public employers may implement for an internal process which must be exhausted prior to a petitioner gaining access to the courts to contest a public employer’s application of the veteran’s preference in public employment. (7-1-21)T

**002. – 009. (RESERVED)**

**010. DEFINITIONS.**

Definitions in Section 65-502, Idaho Code, apply to terms in these rules, supplemented by the following: (7-1-21)T

**01. Petitioner.** Petitioner means a person who alleges the denial of a preference. (7-1-21)T

**02. Preference.** Preference means a right or benefit granted to the petitioner under Title 65, Chapter 5, Idaho Code. (7-1-21)T

**03. Presiding Officer.** The individual or individuals, as more particularly described in Subsection 103.01 of these rules, appointed by the public employer executive to preside at a hearing. (7-1-21)T

**04. Public Employer Executive.** Public employer executive means the individual or body of individuals in whom the ultimate legal authority of the public employer is vested by any provision of law. (7-1-21)T

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

**100. HEARING REQUESTS.**

**01. Written Requests.** A petitioner must make a hearing request in writing to the public employer executive. A written hearing request must be hand delivered to the public employer executive or deposited in the United States mail. Hearing requests must contain the following information: (7-1-21)T

**a.** The petitioner’s full name and complete mailing address. (7-1-21)T

**b.** A request for either a telephonic or a face-to-face hearing. The petitioner shall provide the telephone number where a telephonic hearing may be conducted. (7-1-21)T

**c.** The position for which the petitioner applied for appointment. (7-1-21)T

**d.** A brief statement of the petitioner’s basis of eligibility for a preference, as set forth in Section 65-503, Idaho Code. (7-1-21)T

**e.** A brief statement of the issues petitioner proposes to raise at the hearing. (7-1-21)T

**f.** Any dates or times that the petitioner or the petitioner’s attorney cannot be available for a hearing. (7-1-21)T

**02. Timely Requests.** The public employer executive must receive hearing requests by 5 p.m. at the offices of the public employer executive no later than thirty-five (35) days following the date of the alleged denial of a preference. The date of the alleged denial of a preference for the purpose of calculation of time under Subsection 100.02 of these rules, is the date of issuance of a notice to the petitioner that the petitioner was not awarded a position or, if no notice is issued, the date petitioner becomes aware that he was not awarded a position. (7-1-21)T

**03. Request Withdrawal.** A petitioner may withdraw a hearing request at any time. (7-1-21)T

**04. Disposition of Case Without a Hearing.** Any hearing request may be resolved without a hearing on the merits of the request by stipulation, settlement, motion to dismiss, summary judgment, default, or for lack of jurisdiction. The public employer executive must dismiss an appeal that is not timely filed for lack of jurisdiction. (7-1-21)T

**101. HEARING NOTICES.**

**01. Notification of Hearing.** Upon timely receipt of a hearing request, the public employer executive shall notify petitioners of the time and date of the hearing and the presiding officer at the hearing not less than seven (7) days prior to the hearing. The hearing notice shall specify whether the hearing will be conducted by telephone or face-to-face. If the hearing is to be face-to-face, the hearing notice shall specify the location of the hearing. The hearing notice shall stipulate an address for the filing of documents with the presiding officer. (7-1-21)T

**02. Location of Hearings.** Hearings may be conducted by telephone or face-to-face in the discretion of the public employer executive, except that where the petitioner or another participant in the hearing would be denied the opportunity to participate in the hearing if held by telephone, the hearing will be face-to-face. Face-to-face hearings will be held in the city in which the position the petitioner applied for appointment is located, unless otherwise agreed upon by the parties. (7-1-21)T

**03. Hearing Date.** The public employer executive shall conduct hearings within thirty-five (35) days of receipt of the hearing request. The public employer executive may extend the hearing date for an additional thirty-five (35) days for good cause shown by the public employer executive or the petitioner. (7-1-21)T

**102. PREHEARING PROCEDURE.**

**01. Discovery.** Prehearing discovery is limited to obtaining the names of witnesses and copies of documents the opposing party intends to offer as exhibits. The presiding officer at the hearing may order production of the names of witnesses and copies of documents after receiving a written request for an order of production. The presiding officer shall issue an order of production as needed to ensure the orderly conduct of the hearing. (7-1-21)T

**02. Subpoenas.** If the public employer executive holds statutory subpoena power applicable to hearings under these rules, the presiding officer may issue subpoenas for witnesses or documents. (7-1-21)T

**03. Briefing.** The presiding officer may require briefs to be filed by the parties and establish a reasonable briefing schedule. (7-1-21)T

**04. Filing of Documents.** All documents requested by a party to be entered as exhibits shall be filed with the presiding officer in person or by first class mail with a copy provided to the opposing party. Service by mail is complete when the document, properly addressed and stamped, is deposited in the United States mail. A certificate showing delivery to all parties must accompany all documents when they are filed with the presiding officer. (7-1-21)T

**103. PROCEDURE AT HEARING.**

**01. Presiding Officer at Hearing.** In the discretion of the public employer executive, the public employer executive, one (1) or more members of the public employer executive, or one (1) or more hearing officers will be the presiding officer at the hearing. (7-1-21)T

**02. Representation.** The petitioner may represent himself. Either party may be represented by legal counsel, authorized to practice law in Idaho, at the party's own expense. (7-1-21)T

**03. Evidence.** The presiding officer may exclude evidence that is irrelevant, immaterial, incompetent, unduly repetitious, excludable on constitutional or statutory grounds, or protected by legal privilege. Hearsay evidence may be admitted if it is relevant to the grant or denial of the preference and is sufficiently reliable that prudent persons would commonly rely on it in the conduct of their affairs or if the hearsay evidence corroborates competent evidence. All other evidence may be admitted if it is of a type commonly relied upon by prudent persons in the conduct of their affairs. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Notice may be taken of judicially cognizable facts or general, technical, or scientific facts by the presiding officer on its own motion or on motion of a party. (7-1-21)T

**04. Hearing Record.** The presiding officer shall make a record of the hearing consisting of: an audio

recording of the hearing, except in instances where the presiding officer requires a different method of recording the hearing; and, exhibits and other items of evidence presented at the hearing. A party may request a copy of the hearing record, at the party's own expense. (7-1-21)T

**104. FINAL ORDER.**

**01. Order of the Presiding Officer.** The presiding officer must issue a written order not more than thirty-five (35) days from the date of the hearing that includes: (7-1-21)T

- a. Specific findings on all major facts at issue; (7-1-21)T
- b. A reasoned statement in support of the decision; (7-1-21)T
- c. All other findings and recommendations of the presiding officer; (7-1-21)T
- d. A preliminary decision finding that a preference was or was not applied by the public employer as required by Title 65, Chapter 5, Idaho Code; and (7-1-21)T
- e. The procedure and time limits for filing a request for a review by the public employer executive, if available. (7-1-21)T

**02. Review by the Public Employer Executive.** (7-1-21)T

a. If the presiding officer at the hearing was a hearing officer or less than a quorum of the public employer executive, either party may request a review by a quorum of the public employer executive not later than seven (7) days from the date the presiding officer mailed the order of the presiding officer. The request must identify all legal and factual bases of disagreement with the order of the presiding officer. (7-1-21)T

b. Upon receipt of the request for a review hearing, the public employer executive may: (7-1-21)T

- i. Issue a written order affirming the decision of the public employer executive without a hearing; or, (7-1-21)T
- ii. Issue a notice for a review hearing complying with the provisions of Section 101 of these rules. (7-1-21)T

c. If the public employer executive issues a notice for a review hearing, the notice will establish a schedule for briefing, if allowed, and specify whether oral argument will be heard on the review. (7-1-21)T

d. The public employer executive shall conduct review hearings within thirty-five (35) days of receipt of the review request. (7-1-21)T

e. The public employer executive shall issue a written order not more than thirty-five (35) days from the date of the review hearing containing: (7-1-21)T

- i. Specific findings on all major facts at issue; (7-1-21)T
- ii. A reasoned statement in support of the decision; (7-1-21)T
- iii. All other findings and recommendations of the public employer executive; and (7-1-21)T
- iv. A finding that a preference was or was not applied by the public employer as required by Title 65, Chapter 5, Idaho Code. (7-1-21)T

**03. Order of the Public Employer Executive.** (7-1-21)T

a. The following shall be orders of the public employer executive: (7-1-21)T

i. The order of the presiding officer if the presiding officer is an individual serving as the public employer executive or a quorum of the public employer executive. The date of exhaustion of the appeal process is the date such order of the presiding officer is issued. (7-1-21)T

ii. The order of the presiding officer if the presiding officer is a hearing officer or less than a quorum of the public employer executive and the public employer executive fails to hold a review hearing after a timely request or fails to issue an order within the required time after holding a review hearing. The date of exhaustion of the appeal process is the last day the public employer executive was required by these rules to hold a hearing or to issue an order. (7-1-21)T

iii. The written order of the public employer executive following a review hearing. The date of exhaustion of the appeal process is the date such order of the public employer executive is issued. (7-1-21)T

iv. The initial hiring determination of the public employer executive if the public employer executive fails to hold a hearing as required by these rules or if the presiding officer fails to issue an order after holding a hearing. The date of exhaustion of the appeal process is the last day the public employer executive was required by these rules to hold a hearing or to issue an order. (7-1-21)T

b. Orders of the public employer executive shall set forth the procedure and time limits for filing an appeal to the district court under Section 65-506, Idaho Code. (7-1-21)T

**105. -- 200. (RESERVED)**

**201. ALTERNATIVE PROCESSES.**

A public employer may publish an alternative internal review process for challenges to the application of Title 65, Chapter 5, Idaho Code, if such process: (7-1-21)T

**01. Appeal Deadline.** Establishes a deadline of thirty-five (35) days for the filing of appeals alleging the denial of a preference. (7-1-21)T

**02. Notice of Process.** Includes written notice to applicants for employment of the existence of the process and how to obtain a copy of the process. Publication of the process in a rule or ordinance of the public employer shall be written notice to applicants for employment. (7-1-21)T

**03. Opportunity to Be Heard.** Provides an opportunity in the internal review for the petitioner to submit argument, evidence, and witnesses and to cross-examine the public employer executive's witnesses. (7-1-21)T

**04. Record of Process.** Produces a record of the internal review process that is available to the district court. (7-1-21)T

**05. Written Final Order.** Requires a written final order of the public employer containing: (7-1-21)T

a. Specific findings on all major facts at issue; (7-1-21)T

b. A reasoned statement in support of the decision; and (7-1-21)T

c. A finding that a preference was or was not applied by the public employer as required by Title 65, Chapter 5, Idaho Code. (7-1-21)T

**06. Notice of Appeal Rights.** Includes written notice to petitioners at the conclusion of the internal review of the procedure and time limits for filing an appeal to the district court under Section 65-506, Idaho Code. (7-1-21)T

**202. -- 300. (RESERVED)**

**301. APPEAL TO DISTRICT COURT.**

Petitioners must exhaust an appeal process implemented under these rules prior to appeal to district court. If a public employer implements an appeal process under these rules, petitioner may appeal the order of the public employer executive to a district court of the state of Idaho within one hundred eighty (180) days of the exhaustion of the appeal process. If a public employer has not implemented an appeal process under these rules, the petitioner may file an action directly in a district court of the state of Idaho within thirty-five (35) days of the alleged denial of a preference. (7-1-21)T

**302. TRANSFER OF HEARING RECORD TO DISTRICT COURT.**

The public employer shall submit a complete copy of the hearing record to a district court of the state of Idaho following the filing of an appeal and payment by the appealing party of the costs of duplicating and preparing the hearing record for submission, including labor costs. The opposing party may obtain a copy of the transcript at a cost not exceeding the cost of duplicating the hearing record submitted to the district court. (7-1-21)T

**303. -- 999. (RESERVED)**