

Dear Senators ANDREASON, Coiner & Werk, and  
Representatives SCHAEFER, Bradford & Ringo:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the Division of Human Resources and Personnel Commission: 15.04.01 Rules of the Division of Human Resources and Idaho Personnel Commission.

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 10-09-08. 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 11-06-08.

\_\_\_\_\_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 334-2475, or send a written request to the address or FAX number indicated on the memorandum enclosed.

## **MEMORANDUM**

**DATE:** September 22, 2008

**TO:** Subcommittees for Administrative Rules Review of the Senate Commerce and Human Resources Committee and the House Commerce and Human Resources

**FROM:** Eric Milstead, Principal Research Analyst

**SUBJECT:** Idaho Division of Human Resources and Idaho Personnel Commission - IDAPA 15.04.01 (Docket No. 15-0401-0801)

The Division of Human Resources and Idaho Personnel Commission submit notice of temporary and proposed rulemaking at IDAPA 15.04.01 – Rules of the Division of Human resources and Idaho Personnel Commission. The temporary and proposed rules reflect changes in a number of areas—some housekeeping and technical while others are more substantive. The temporary rules became effective August 20, 2008.

The Division notes that the proposed rule changes are necessary to reflect statutory changes made during the 2006 and 2008 legislative sessions. The Division also notes there are housekeeping changes, such as updating contact information, updating references to the “department” and revising the definition section to make it easier to use. The Division states that in providing these updates and housekeeping changes, the rule revisions “provide a benefit to all those who must use the rules”. Many of the changes are technical or housekeeping in nature. However, there are a number of more substantive changes, as well. These include, among others:

- Elimination of medical/dental appointment leave (the rule in effect prior to the implementation of the temporary rule provided that employees are allowed up to two hours for each occasional appointment for personal or family member medical, dental or optical examination or treatment. (See, Temporary and Proposed Rule Section 240.04, page 310)
- Revision of layoff after disability rule (the rule in effect prior to the implementation of the temporary rule provided that if an employee became disabled, whether or not due to workers compensation injury, and is unable to

return to work after *six months* absence, or when sick leave has been exhausted, whichever is longer, the employee's position shall be declared vacant. The temporary and proposed rule reduces the six months absence to a twelve week absence, unless otherwise prohibited by state or federal law. (See, Temporary and Proposed Rule, Section 241.02, page 310)

- Elimination of election leave (authorizing an appointing authority to grant leave with pay to an employee for voting in primary, general municipal, school, or special elections where the employee's work would interfere with his or her being able to vote). (See, Temporary and Proposed Rule, Section 250.09, page 313)
- Provides for bone marrow and organ donor leave with pay. (See, Temporary and Proposed Rule, Section 250.11, page 314, reflects changes in 2006 Senate Bill 1373)
- Elimination of earned administrative leave. (See, Temporary and Proposed Rule, Section 250.07, page 312, reflects changes in 2008 Senate Bill 1252)

In terms of being proposed rules, the changes appear to be within the Division's authority. For example, while the medical/dental appointment leave rule has been provided as a benefit to state employees for a number of years, the Division appears to be within its legal purview to eliminate the rule. Similarly, the revision to the "layoff-after-disability" rule appears to be within the Division's authority. That revision is consistent with provisions found in the federal Family and Medical Leave Act (See, Section 630.1203 of the FMLA).

Of course, a consequence of adopting these changes via a temporary rule is that the rule takes effect prior to the Legislature's review of the rule changes. Because this Docket reflects a temporary and proposed rule, the Legislature will have the opportunity to review and act upon the proposed rule, but only after the temporary rule has been in effect for a number of months.

We believe it may be appropriate for the Legislature to consider whether some of the rule changes qualify under the temporary rules statute. The following discussion raises questions the Legislature might consider in terms of the temporary rule statute, Section 67-5226, Idaho Code. However, we note that regarding the *proposed* rule, the Division appears to be within its statutory authority in making these changes. Whether all the changes reflect good policy is left to the Legislature to determine.

#### Temporary Rule.

The question arises as to whether the rule changes found in this Docket are appropriate as a temporary rule. The short answer is that some of the changes clearly are consistent with the temporary rule statute, while in terms of other changes, it may be somewhat less clear.

A *proposed* rule does not take effect until the Legislature has reviewed the proposed rule. See, Sections 67-5223 and 67-454, Idaho Code. Consequently, in terms of proposed rules, the Legislature has a statutory opportunity to object to a rule. Conversely, in terms of a temporary rule, the Legislature's opportunity to review still exists but that opportunity occurs during the Legislative session and only after the temporary rule has been in effect. It is in part, at least, for that reason that instances in which temporary rules are permitted are limited by statute.

Section 67-5226, Idaho Code authorizes and governs the use of temporary rules. It reads in part:

“(1) If the governor finds that:

- (a) protection of the public health, safety, or welfare; or
- (b) compliance with deadlines in amendments to governing law or federal programs; or
- (c) conferring a benefit;

requires a rule to become effective before it has been submitted to the legislature for review the agency may proceed with such notice as is practicable and adopt a temporary rule....The agency may make the temporary rule immediately effective. The agency shall incorporate the required finding and a concise statement of its supporting reasons in each rule adopted in reliance upon the provisions of this subsection.

.....

(3) In no case shall a rule adopted pursuant to this section remain in effect beyond the conclusion of the next succeeding regular session of the legislature unless the rule is approved, amended or modified by concurrent resolution...

.....

(6) Concurrently with the promulgation of a rule under this section, or as soon as reasonably possible thereafter, an agency shall commence the promulgation of a proposed rule in accordance with the rulemaking requirements of this chapter...”

In short, the statute provides three reasons or findings, any of which the Governor may use to implement a temporary rule. On their face, those three reasons appear to be broad in scope. Idaho Code does not define the three terms found in Section 67-5226(1).

In its notice of rulemaking, the agency states it is implementing the temporary rule based upon Section 67-5226(1)(b)—compliance with deadlines in amendments to governing law or federal programs; and Section 67-5226(1)(c)—conferring a benefit. The agency states specifically:

“Pursuant to Section(s) 67-5226(1)(b) and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The temporary rule is necessary because the current rules used by the agencies are flawed in a number of areas and are not aligned with recent legislative action as reflected in 2008 Senate Bill 1252 and 2006 Senate Bill 1363.”

The agency is using two statutory reasons for the temporary rule. The rules: (1) are not aligned with recent legislative action; and (2) that the rules are conferring a benefit.

We comment on both reasons.

A. Compliance with deadlines in amendments to governing law or federal programs (Section 67-5226(1)(b)).

We have no concern regarding the use of the temporary rule to implement the provisions of 2008 legislation. The changes made to the existing rule by the adoption of those provisions directly related to 2008 Senate Bill 1252 is consistent with Section 67-5226(1)(b), Idaho Code. These rule changes include revisions to the rules on hours of work and overtime pay and include the elimination of earned administrative leave.

However, we raise some questions regarding the 2006 legislation, Senate Bill 1363. That bill amended statute relating to the state compensation plan and the rights and privileges of veterans, including rules on preference, examination, and placement on registers. To the extent changes from Senate Bill 1363 are reflected in the temporary rule under the provisions of Section 67-5226(1)(b), we question how these statutory changes, passed during the 2006 Legislative session, require the use of a temporary rule. (Note: There appear to be some changes in the temporary rule related to Senate Bill 1363 that could be considered “conferring a benefit.” See, for example, Section 083 of the temporary and proposed rule—moving expense reimbursement). While we note that the language of Section 67-5226(b) is nowhere defined in statute, it seems at least arguable that the language “compliance with *deadlines* in amendments to governing law” suggests that timing is an important element in this provision. It seems at least arguable that the use of a temporary rule, under the provisions of Section 67-5226(1)(b), is authorized when time is critical to comply with deadlines in governing law. The agency points to no deadlines to justify the use of the temporary rule in this instance.

As we noted above, we find no statutory definition of the terms found in Section 67-5226(1)(b), nor do we find case law dealing with this provision. Absent such guidance, the Division’s use of a temporary rule in regard to the 2006 legislation cannot be said to be inconsistent with Idaho law. Further, we note that the use of temporary rules in situations such as this have occurred, and perhaps often. We raise the questions above only as matters to be considered by the Legislature as it deems appropriate.

B. Conferring a benefit (Section 67-5226(1)(c), Idaho Code).

*Medical/Dental Leave (MDA)*. In its Notice of Rulemaking, the Division states specifically that the *proposed* rule provides a benefit to all those who must use the rules. The Division notes that this benefit comes in the form of, among other things, housekeeping changes, updating references, and reformatting the definition section to make it more accessible. The changes provide uniformity, delete redundant and unnecessary definitions, update definitions to correctly reflect current statutes and define new terms. The Notice of Rulemaking does not speak specifically to the reasons for the elimination of Medical/Dental Leave (MDA) (Temporary

and Proposed Rule Section 240.04) or the revisions to the disability layoff rule (Temporary and Proposed Rule Section 241.02). However, conversations with Division staff have indicated that MDA was eliminated by temporary rule because the change conferred a benefit to Idaho taxpayers generally.

To reiterate, we find little guidance from statute or the courts as to what “conferring a benefit” entails. In this instance, however, we note that, in essence, the temporary rule is eliminating one specific benefit (MDA leave for state employees) while perhaps conferring a general benefit to the state taxpayers. Whether or not the elimination of one specific benefit while ostensibly conferring a general benefit comports with the temporary rule statute may best be determined by the Legislature in its review of the elimination of MDA. Finally, we note that there may well be legitimate and compelling reasons for the elimination of this rule. The question, however, is whether the elimination of the MDA rule is appropriate in terms of a temporary rule.

Disability lay-off rule. We examine the revisions to the disability lay-off rule under both Section 67-5226(1)(a) and (b). The revision changes the time period a position is protected from six-months of disability to twelve weeks of disability. Again, the Notice of rulemaking does not speak specifically to the reasons for this revision other than the general citation to Section 67-5226(b) and (c). Although the revision to the rule is consistent with similar provision in the FMLA, the question again arises—does this revision comport with the temporary rule statute. The provisions in the FMLA have been in existence for a number of years, so the timing argument (Section 67-5226(b) is somewhat problematic. Which leaves Section 67-5226(c)--“conferring a benefit”. Again, it could be asked how this revision is conferring a benefit.

#### Temporary Rule Statute: Possible Issues to Consider

We note again that the terms found in Section 67-5226(1)(a), (b), and (c) are not defined in Idaho Code. As written, each of the three provisions are very broad and have been cited by any number of Governors and agencies to authorize a wide array of temporary rules. The provisions, as written, provide broad latitude for Governors and agencies to exercise the use of temporary rules. The current Docket provides an opportunity for the Legislature, if it so desires, to consider the merits of that latitude.

Our review of legislative history regarding the temporary rule statute provides at least some insight into the discussions surrounding the consideration of the temporary rule statute and the Administrative Procedures Act. Minutes from the Legislative Council Committee on Administrative Procedures (October 29, 1991) reflect discussion on this very topic. The Committee was meeting during the 1991 Interim Session to deliberate on the adoption of the Administrative Procedures Act. Committee minutes reflect the following: Professor Dale Goble, University of Idaho College of Law noted:

“Section 67-5226 of this proposal somewhat expands the kinds of rules that can be promulgated by authorizing the agencies to promulgate temporary rules in certain circumstances.

If an agency chooses to change a rule to comply with changes in federal law, then it can do so through a temporary rule while it promulgates a final rule. If the agency is conferring a benefit, then it can do so through an emergency rule followed by a final rule. *He said it was felt that in both of those situation we wouldn't run the risk of cutting off people's rights.*" (Emphasis added).

In addition, the Minutes reflect the following comments from then state Senator Crapo: "[I]n Section 67-5226, temporary rules, if an agency finds that it is reasonably necessary to protect the public health, safety, or welfare, or reasonably necessary to confer a benefit, then they can adopt a temporary rule. He said this provision is so broad, that we might as well allow an agency to enact a temporary rule whenever they want, because that's exactly what that provision says. He said either put no limits on it, or figure out what we're trying to let happen and define it." (See, Minutes of Committee on Administrative Procedures, October 29, 1991, pages 3 and 15.)

We note that the concerns and issues raised by Senator Crapo may merit reconsideration by the Legislature. While we have some reservations about the use of temporary rulemaking in regard to some of the changes in the current Docket, state agencies have, with regularity, broadly construed the meaning of the temporary rule statute. In light of that, the Legislature might consider revisiting that statute to provide clearer guidance as to what rule changes appropriately qualify for temporary rulemaking.

Aside from the questions raised regarding the temporary rulemaking, the proposed rule appears to be within the authority granted to the Division under Section 67-5309, Idaho Code.

cc: Judie Wright, Administrator, Division of Human Resources  
Dennis Moberly, Human Resources Program Manager

**IDAPA 15 - OFFICE OF THE GOVERNOR  
DIVISION OF HUMAN RESOURCES AND PERSONNEL COMMISSION**

**15.04.01 - RULES OF THE DIVISION OF HUMAN RESOURCES  
AND IDAHO PERSONNEL COMMISSION**

**DOCKET NO. 15-0401-0801**

**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is August 20, 2008.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 67-5309, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The proposed rule changes are necessary to reflect amendments in governing statutes. Some of these amendments have been in effect since 2006, such as those involving the state compensation plan and the rights and privileges of veterans; others, like the amendments to the statute on hours of work and overtime pay, were enacted in 2008. The rule changes provide a benefit to all those who must use the rules. This benefit comes in the form of housekeeping changes, such as updating of the address and telephone information, updating references to the "department" and "administrator" and reformatting of the definition section in order to make the definitions more readily accessible and far less expensive to amend in the event that subsequent changes become necessary. The housekeeping changes also involved deletion of many definitions (some because they are redundant or unneeded; others because they have been relocated and incorporated into existing rules). Finally, the housekeeping changes include updating references in the rules to controlling provisions of statute or rule for ease of reference of the reader.

The proposed rules update agency address and telephone information; update references to "department" and "administrator" throughout the document in order to provide uniformity; delete redundant or otherwise unnecessary definitions, update definitions to correctly reflect current statutes and define new terms such as key employee, merit increase matrix, and military duty; update several rules pertaining to veterans (i.e., rules on preference, examination, placement on registers) to comply with statute; amend rules regarding calculation of pay, work hours, bonuses and shift differential to reflect amendments in code; incorporate rule on moving expense reimbursement as required by law; update rule regarding sick leave to correctly mirror statute, incorporate rule pertaining to bone marrow and organ donor leave with pay, and delete rules pertaining to medical/dental appointment leave, election leave, and earned administrative leave; define compensable hours and hours worked; and delete requirement that each agency adopt human resource policies on specified topics.

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

The temporary rule is necessary because the current rules used by the agencies are flawed in a number of areas and are not aligned with recent legislative action as reflected in 2008 Senate Bill 1252 and 2006 Senate Bill 1363.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), Idaho Code, the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

**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: N/A



**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the need for temporary rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Dennis Moberly, Human Resources Program Manager, (208) 429-5531.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 19th day of August 2008.

Judie Wright, Administrator  
Division of Human Resources  
700 W. State St.  
P. O. Box 83720, Boise, ID 83720-0066  
Phone: (208) 854-3054 / Fax: (208) 334-2438

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 15-0401-0801**

**004. ADDRESS AND PHONE NUMBERS OF THE DIVISION OF HUMAN RESOURCES AND IDAHO PERSONNEL COMMISSION.**

The offices of the Division of Human Resources and Idaho Personnel Commission are located at 700 West State Street, Boise, Idaho. ~~The mailing address is PO Box 83720, Boise, ID 83720-0066. The office telephone number of the Commission and the Division of Human Resources is (208) 334-2263. 429-5500 Additional phone numbers are: a and the toll-free number is 1-800-554-JOBS (5627); a toll free TDD or telecommunications device for the deaf, 1-800-542-5738. The Division's and Commission's office FAX number is (208) 334-3182 2438 and e-mail address is idhr@idhr.idaho.gov.~~ ~~(3-16-04)(8-20-08)T~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. DEFINITIONS -- A THROUGH E.**

Each of the terms defined in these rules have the meaning given herein unless a different meaning is clearly required by the context. Additional definitions are contained in Section 67-5302, Idaho Code. (7-1-87)

**01. Administrator.** The Administrator of the Division of Human Resources in the Office of the Governor or delegate for those responsibilities assigned by the administrator to a specific appointing authority. ~~(3-16-04)(8-20-08)T~~

**02. Agency Classification.** A classification of positions unique to an agency. (8-20-08)T

**023. Allocation.** The assignment of a classification to a pay grade in the compensation schedule. (3-16-04)

**034. Appeal.** Any written request for relief from dismissal, demotion, suspension, or other adverse action filed with the Commission by an employee, appointing authority, or applicant. The meaning of appeal includes application, petition, or protest. (3-16-04)

~~045.~~ **Appellant.** An employee, appointing authority, or applicant filing an appeal or a petition for review with the Commission. (3-16-04)

~~056.~~ **Appointing Authority.** *“Appointing Authority” means* ~~the~~ officer, board, commission, person or group of persons authorized by statute or lawfully delegated authority to hire, dismiss or otherwise significantly impact the employment status of individuals in any ~~department~~ agency. (Ref. Section 67-5302(3), Idaho Code) ~~(3-16-04)~~(8-20-08)T

~~067.~~ **Appointment, Limited.** The appointment of a person to a classified, position where the work is projected to be of limited duration, for which the person has qualified by examination. (3-16-04)

~~078.~~ **Appointment, Nonclassified.** The appointment of a person to a position exempt from the application of these rules by the provisions of Section 67-5303, Idaho Code. (7-1-87)

~~08.~~ **Appointment, Original or Initial.** *For purpose of assigning veteran’s preference points, the first time a person is hired by a state agency after attaining eligible veteran’s status.* (Ref. Section 65-506(3), Idaho Code and Rule 102.04) ~~(3-16-04)~~

~~09.~~ **Appointment, Permanent.** The appointment of a person to a classified position who has been certified by the appointing authority to have successfully completed the required probationary period and whose employment is permanent, subject to removal or discipline only under the provisions of Title 67, Chapter 53, Idaho Code, and the rules of the Division of Human Resources and Idaho Personnel Commission. (3-16-04)

~~10.~~ **Appointment, Probationary.** The appointment of a person to a classified position for which the person has qualified by examination but is serving a work trial period as a condition for certification to permanent appointment. (4-5-85)

~~11.~~ **Appointment, Project Exempt.** The appointment of a person to a nonclassified position established under federal grants, which by law restricts employment eligibility to specific individuals or groups on the basis of non-merit selection requirements. (Ref. Section 67-5303(m), Idaho Code) (3-16-04)

~~12.~~ **Appointment, Provisional.** The appointment of a person to a position in classified service for which the person has not qualified by examination pending the establishment of a register for the classification of such position. (3-16-04)

~~13.~~ **Appointment, Seasonal.** An appointment to a regular position in classified service with intermittent work periods. (Ref. Section 67-5302(31), Idaho Code) (3-16-04)

~~14.~~ **Appointment, Temporary.** The appointment of a person to a nonclassified position which is ~~not permanent in nature~~ of a limited duration, and in which hours worked will not exceed one thousand three hundred eighty-five (1,385) hours during any twelve (12) month period for any one (1) ~~department~~ agency. Such Temporary appointments also may occur for intermittent periods of time and include recurring assignments. (Ref Section 67-5302(33), Idaho Code) ~~(3-16-04)~~(8-20-08)T

~~15.~~ **Base Pay.** The rate paid for performing a job, excluding bonuses, shift differentials, overtime or other compensation premiums. (8-20-08)T

~~156.~~ **Certifiable Range.** An examination score and a rank on an eligibility register sufficiently high to be among the top ten (10) available names, plus names of all individuals with scores identical to the tenth ranking eligible, for certification to fill a position in the classification for which the register was established. (3-16-04)

~~16.~~ **Classification Specification.** *A written statement of the purpose and responsibilities characteristic of a classification, which includes the title, principal accountabilities, and minimum qualifications of education, training and experience, abilities, knowledge, skill, and other qualifications required to perform the work of the classification.* ~~(3-16-04)~~

~~17.~~ **Classification Schedule.** *All classification specifications utilized in classified service listed by title,*

~~classification code, and pay grade to which allocated.~~

~~(3-16-04)~~

~~187. **Classified Service.** That body of positions in state ~~departments~~ agencies subject to Title 67, Chapter 53, Idaho Code, as defined therein and excludes temporary, project exempt, and nonclassified appointments. (7-1-87)(8-20-08)T~~

~~18. **Commission.** As utilized in these rules, refers to the Idaho Personnel Commission as established in Section 67-5307, Idaho Code. (8-20-08)T~~

~~19. **Compensation Plan.** The overall system of salary administration for classified service including Sections 67-5309B and 67-5309C, Idaho Code; the classification and compensation schedules; Division of Human Resources and Idaho Personnel Commission rules and policies; and ~~departmental~~ agency policies governing employee pay. (Ref. Sections 67-5309A, 67-5309B, 67-5309C, and 67-5309D, Idaho Code) (3-16-04)(8-20-08)T~~

~~20. **Compensation Schedule.** The pay grades established by ~~Section 67-5309C, Idaho Code, the~~ Division of Human Resources and associated rates of pay ~~established in Rule 070.05.~~ (Ref. Section 67-5309C, Idaho Code) (3-30-01)(8-20-08)T~~

~~21. **Consultant.** An independent contractor who provides professional or technical advice, counsel, or service ~~on a set fee basis.~~ (Ref. Rule Section 050) (3-16-04)(8-20-08)T~~

~~22. **Demotion.** ~~The reduction of an employee from a position which the employee occupies in one (1) classification to a position in another classification in a lower pay grade.~~ (3-16-04)~~

~~23. **Departmental Classification.** ~~A classification of positions that is unique to a department.~~ (3-16-04)~~

~~242. **Dismissal.** The separation of an employee from classified service with cause assigned by the appointing authority pursuant to ~~Rule~~ Section 190 of these rules. (7-1-87)(8-20-08)T~~

~~253. **Due Process.** As related to Idaho's Personnel System for permanent classified employees, the activities required to address an individual's constitutional right to notice and an opportunity to be heard. (Ref. Section 67-5315, Idaho Code). (3-16-04)~~

~~26. **Earned Administrative Leave (EAL).** ~~Paid leave for hours worked which exceed the regularly scheduled hours but do not result in overtime. These hours may accrue after hours worked and hours on paid leave exceed forty (40) hours in one (1) workweek. In the case of those employees engaged in law enforcement, correctional, and firefighting activities characterized by irregular shift work schedules, EAL hours may accrue after hours worked and hours on paid leave exceed one hundred and sixty (160) hours in a period of twenty eight (28) consecutive days.~~ (3-30-01)~~

~~27. **Employee.** ~~Any person in the employ of a state department who is paid a salary or wages.~~ (4-5-85)~~

~~284. **Employment History.** The information available to the public without the employee's consent in accordance with Section 9-340(C), Idaho Code, for every agency for which a current or former public official works, including the official reason(s) for separation from employment but not including accrued leave balances or usage. (3-30-01)(8-20-08)T~~

~~295. **Examination.** The application of written tests, oral interviews, performance tests, investigation, physical evaluation, evaluation of education and experience, or any other measure of job-related knowledge and ability, including performance in probationary periods. (4-5-85)~~

~~30. **Factoring.** ~~The assignment of Hay evaluation points to a classification in accordance with Section 67-5309B, Idaho Code, and Rule 074.~~ (3-30-01)~~

**011. DEFINITIONS -- F THROUGH J.**

Each of the terms defined in these rules will have the meaning given herein unless a different meaning is clearly

required by the context. Additional definitions are contained in Section 67-5302, Idaho Code. (8-20-08)T

~~301.~~ **General Classification.** A classification of positions that is common to more than one (1) participating ~~department~~ agency. (3-16-04)(8-20-08)T

~~302.~~ **Good Cause.** The conduct of a reasonable person in the same or similar circumstances. (7-1-87)

~~03.~~ **Hay Method.** A methodology for establishing the relative value of jobs and used as a dimension of the pay system. (8-20-08)T

~~304.~~ **Hiring List.** A hiring list is a subset of a register (~~Rule 010.61~~). A ~~hiring list~~ consisting of the top ten (10) individuals on the register, plus all individuals tied for the tenth position, certified as eligible for a specific recruitment. Candidates for reinstatement ~~and~~ or transfer may be considered and are provided in addition to the top ten. (3-16-04)(8-20-08)T

~~34.~~ **Hours Worked:** (7-1-87)

~~a.~~ Those hours actually spent in the performance of the employee's job, excluding holidays, vacation, sick leave or other approved leaves of absence, and excluding on-call time. (Ref. Rule 010.40) (3-30-01)

~~b.~~ Travel time shall be compensated pursuant to policy set forth by the Board of Examiners. (3-30-01)

~~c.~~ Attendance at lectures, meetings, training programs and similar activities outside of the employee's regular working hours when attendance has been directed by the appointing authority or designee. (5-15-85)

~~305.~~ **Incumbent.** Any person holding a classified or non-classified position in state service. (7-1-87)

~~306.~~ **Independent Contractor.** Any person, firm, or corporation meeting the Internal Revenue Service's test for an independent contractor or a self-employed person. (Ref. Rule ~~010.21~~ Section 050) (3-16-04)

~~37.~~ **Interested Person.** A person or department directly affected by a rule, statute or department action or inaction. (6-30-78)

~~38.~~ **Intoxication.** Being under the influence of alcohol, or misuse of medication or controlled substances. (Ref. Rule 190.01.f) (3-30-01)

~~3907.~~ **Involuntary Transfer.** A significant change in work location, shift and/or organizational unit made as a result of a management decision as opposed to an employee's request or agreement to transfer. (3-30-01)

## 012. DEFINITIONS -- K THROUGH O.

Each of the terms defined in these rules will have the meaning given herein unless a different meaning is clearly required by the context. Additional definitions are contained in Section 67-5302, Idaho Code. (8-20-08)T

~~01.~~ **Key Employee.** An individual specifically hired for an at-will or nonclassified position for which there is no, or only a limited, selection process. Examples may include a private secretary or deputy to an official who holds a confidential relationship to the appointing or employing officer. (Ref. Section 65-502(5), Idaho Code) (8-20-08)T

~~402.~~ **Layoff.** An involuntary reduction in hours of work or separation of an incumbent in the classified service either by reduction in force due to shortage of work or funds, or abolishment of positions. (4-5-85)

~~41.~~ **Layoff Unit (Organizational Unit).** A smaller geographic, programmatic, or other identified subdivision of a department determined by the appointing authority and approved by the administrator for the purpose of conducting a reduction in force (Rule 140). (3-16-04)

~~42.~~ **Leave of Absence With Pay.** A period of absence from duty with the approval of the appointing

~~authority, or as required or allowed by law or these rules, during which time the employee shall be compensated. Leaves of absence with pay have no adverse effect on the status of the employee and include the following leaves: vacation leave, sick leave, special leave situations, and compensatory time off for overtime worked. (3-30-01)~~

~~43. **Leave of Absence Without Pay.** A period of absence from duty with the approval of the appointing authority, or as required or allowed by law or these rules, during which time the employee shall not be compensated. (7-1-87)~~

**4403. Light or Limited Duty.** A general term describing a temporary limited assignment in relation to recovery from injury, illness or other limiting condition as approved by the appointing authority. (3-16-04)

**4504. Merit Increase.** The advancement of an employee's compensation in accordance with Section 67-5309C(b)B, Idaho Code. ~~(7-1-87)(8-20-08)T~~

**05. Merit Increase Matrix.** A pay distribution tool used to advance employee pay based on performance and market data. (8-20-08)T

**06. Military Duty.** Training and service performed by an inductee, enlistee or reservist or any entrant into the armed forces of the United States, not including active duty training as a reservist in the armed forces of the United States or as a member of the National Guard of the United States, when the call is for training only. (Ref. Section 65-502(6), Idaho Code) (8-20-08)T

**4607. Minimum Qualification Specialty.** A minimum qualification required for one (1) or more positions in a classification that is in addition to the other minimum qualifications required for all positions in the classification. (3-16-04)

~~47. **New Classification.** A classification that is not essentially described by any existing job classification. (3-16-04)~~

**408. Occasional or Sporadic Work.** Work that is voluntarily performed by an employee in a different capacity from the employee's regular work and is infrequent, irregular or occurring in scattered instances. (7-1-87)

**409. On-Call Time.** Time when an employee is required to carry a pager, cellular phone, or to leave work at home or with the ~~department~~ agency where the employee may be reached if needed to work, and the employee can use the time effectively for personal purposes. ~~(3-30-01)~~(8-20-08)T

~~50. **Overtime.** Those hours defined as such in Section 67-5302(19), Idaho Code, excluding any time, such as traded time and occasional or sporadic work, that is specifically excluded from the overtime calculation by federal law. (7-1-87)~~

**013. DEFINITIONS -- P THROUGH Z.**

Each of the terms defined in these rules will have the meaning given herein unless a different meaning is clearly required by the context. Additional definitions are contained in Section 67-5302, Idaho Code. (8-20-08)T

**501. Pay Line Exception.** A temporary assignment of pay grade, pursuant to Section 67-5309C(b)(i)D, Idaho Code, in excess of the pay grade allocated pursuant to Section 67-5309B(a), Idaho Code, as approved by the administrator. ~~(3-30-01)~~(8-20-08)T

~~52. **Position, Classified.** A position subject to Chapter 53, Title 67, Idaho Code, and these rules in which one (1) person is hired as a full time or part time employee; or in which two (2) or more persons share in the aggregate of the position. (7-1-87)~~

**02. Permanent Employee.** An employee in the classified service who has successfully completed entrance probation. Permanent employees remain subject to separation as set forth in these rules and Section 67-5309(n), Idaho Code. (8-20-08)T

**503. Promotion.** The advancement through the competitive process of an employee with permanent

status from a position which he ~~or she~~ occupies in one (1) classification to a position in another classification having a higher paygrade. ~~(3-16-04)~~(8-20-08)T

~~54. **Promotion, In-Grade.** To reflect unique agency organization design, an agency may choose to request an internal competitive process to recognize the advancement of an employee with permanent status from a position which he or she occupies in one classification to a position in another classification having greater Hay points, more responsibility, or a unique specialty area, but within the same pay grade. With the approval of the administrator, an in-grade promotion will be treated in all regards as a promotion. (3-16-04)~~

~~55. **Rating/Job Point Factoring.** The number of Hay evaluation points assigned to a classification in accordance with Rule 074. (3-16-04)~~

~~56. **Reasonable Accommodation.** An adjustment made to a job and/or work environment that enables a qualified individual with a disability to perform the essential functions of the position and would not cause undue hardship on the operation of the department. (Ref. Rule 190.01.e.) (7-1-87)~~

~~57. **Reclassification of a Position.** A change of a position from the classification to which it is assigned to another classification. (3-16-04)~~

~~58. **Reclassification of an Employee.** Means a change in the classification assigned to the employee to properly reflect the duties and responsibilities assigned to that employee by an appointing authority. (3-30-01)~~

~~59. **Recruitment.** The process of seeking applicants for employment. (3-16-04)~~

~~604. **Reduction in Pay.** A reduction of an employee's salary from one (1) pay rate to a lower rate within the pay grade to which the employee's classification is allocated. (3-16-04)~~

~~6105. **Register.** A list of names of persons or the name of one (1) person who has been determined to be eligible for employment in a classification on the basis of examination and merit factors as established by the administrator. An adequate register lists at least five (5) names of eligible candidates currently available for consideration for each vacancy in the classification for which the register was established. (3-16-04)~~

~~62. **Reinstatement.** The reappointment of a former or current classified employee pursuant to Rule 124. (3-16-04)~~

~~6306. **Resignation.** The voluntary quitting or abandonment of state employment, excluding retirement. (Ref. Rule 244) ~~(3-16-04)~~(8-20-08)T~~

~~6407. **Respondent.** The party whose interests are adverse to those of the appellant. (7-1-93)~~

~~65. **Status.** The character of an employee's appointment. (7-1-77)~~

~~6608. **Suspension.** An enforced period of absence, with or without pay, for disciplinary purposes, for felony charges, or pending investigation of charges made against an employee pursuant to ~~Rule~~ Section 190 of these rules. ~~(7-1-87)~~(8-20-08)T~~

~~6709. **Termination.** The separation of an entrance or voluntary probationary employee from classified service for unsatisfactory service during the probationary period without cause assigned by the appointing authority pursuant to ~~Rule~~ Section 152 of these rules. ~~(3-16-04)~~(8-20-08)T~~

~~6810. **Traded Time.** Those hours an employee agrees to substitute for another employee during scheduled hours of work, where both work in the same capacity, the agreement to substitute is solely at the employees' option, and the agreement is approved by the agency by whatever manner is customary. (7-1-87)~~

~~6911. **Transfer.** A change of work location of an employee in which the employee changes from one (1) position to another in the same classification or to another classification in the same pay grade. (3-16-04)~~

~~7012.~~ **Underfill.** The filling of a classification of position with an employee in a classification of lower pay grade to accommodate a training period as approved by the administrator. (3-16-04)

**13. USERRA.** Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. Sections 4301 through 4333. Prohibits employment discrimination against persons because of their service in the Armed Forces Reserve, the National Guard, or other uniformed services. (8-20-08)T

~~71.~~ **~~Veteran.~~** ~~Rule 020 defines veteran for the purpose of selection, hiring, and retention preference.~~ (3-16-04)

~~7203.~~ **Workweek.** A period of seven (7) consecutive days beginning 12:01 a.m. Sunday. (Ref. Section 073) (12-10-90)

~~0144.~~ -- **018. (RESERVED).**

**(BREAK IN CONTINUITY OF SECTIONS)**

**020. VETERANS PREFERENCE.**

~~Except for key employee positions, P~~reference must be given to qualified veterans ~~who are residents of Idaho in all initial employment actions including hiring, transfer, promotion,~~ and retention ~~except for confidential secretarial positions.~~ (3-30-01)(8-20-08)T

**01. Qualified Veteran-Defined (For Preference Purposes).** ~~Any person who has served in the active service of the armed forces of the United States during any period of war recognized by the United States Department of Veterans Affairs for the purpose of awarding federal veterans benefits and who has been discharged from service under honorable conditions. (Ref. Sections 65-509 and 65-510, Idaho Code) To receive the preference, the person must have:~~ (3-30-01)(8-20-08)T

**a.** ~~Served on active duty in the armed forces during a war, in a campaign, or expedition for which a campaign badge has been authorized, or served on active duty during the period beginning April 28, 1952 and ending July 1, 1955;~~ (8-20-08)T

**b.** ~~Served on active duty as defined in 38 U.S.C. Section 101(21) at any time in the armed forces for a period of more than one hundred eighty (180) consecutive days, any part of which occurred after January 31, 1955 and before October 15, 1976;~~ (8-20-08)T

**c.** ~~Served on active duty as defined in 38 U.S.C. Section 101(21) in the armed forces during the period beginning on August 2, 1990 and ending on January 2, 1992;~~ (8-20-08)T

**d.** ~~Served on active duty as defined in 38 U.S.C. Section 101(21) at any time in the armed forces for a period of more than one hundred eighty (180) consecutive days, any part of which occurred during the period beginning on September 11, 2001 and ending on the date prescribed by Presidential proclamation or by law as the last date of Operation Iraqi Freedom. (Ref. Section 67-502(14), Idaho Code, and 5 U.S.C. Section 2108); or~~ (8-20-08)T

**e.** ~~Served as may be further defined in 38 U.S.C. Section 101(11).~~ (8-20-08)T

**02. War Veteran (War Era) and Disabled Veteran Defined (for Preference Points on Competitive Exam).** ~~War veterans and d~~Disabled veterans, ~~who are residents of the state of Idaho~~ Purple Heart recipients, and their widows, ~~widowers,~~ or spouses, when qualified under state law ~~shall will~~ have additional points added to a passing score and placed on the register in accordance with the provisions set forth in ~~Rule Section 102 of these rules.~~ (Ref. Rule ~~Subsection~~ 093.03, and Sections 65-502(2), 5063, and 5074(3), and 67-5309(f), Idaho Code) (3-16-04)(8-20-08)T

~~03.~~ **~~Promotion/Transfer Consideration.~~** ~~Qualified veterans shall be given additional consideration in~~

~~promotion and transfer decisions. When candidates are considered to be equal based on valid job-related factors, veterans shall be preferred. (Ref. Sections 65-502, 65-504, 65-509, and 67-5309, Idaho Code) (3-16-04)~~

**043. Retention.** ~~War~~ Veterans (~~War-Era~~) (as defined in Title 65, Chapter 5, Idaho Code) ~~shall~~ will receive the equivalent of three (3) years of satisfactory service in additional points awarded towards the total calculation of retention points in a reduction of work force determination. (Ref. Rule Section 1401 and Section 65-503L, Idaho Code) ~~(3-16-04)~~ (8-20-08)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**026. DUAL EMPLOYMENT.**

There ~~shall~~ will be no conflicting hours of work when a classified employee is employed by more than one (1) state ~~department~~ agency. The employee ~~shall~~ must obtain approval from all appointing authorities concerned prior to beginning dual employment. ~~(4-5-85)~~ (8-20-08)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**050. CONSULTANTS AND PERSONS EMPLOYED UNDER INDEPENDENT CONTRACT.**

Nothing in these rules ~~shall~~ prohibits the use of independent contractors or consultants ~~who are paid on a fee basis~~ for legal, medical, technical, or other professional services, provided that they are not engaged in the performance of administrative duties for any state ~~department~~ agency. No position in the state classified service will be filled by a consultant or independent contractor. ~~(7-1-94)~~ (8-20-08)T

~~**01. No-Fee Basis.** No position in the state classified service shall be filled by a consultant or independent contractor on a fee basis. (8-1-81)~~

**021. Limited Use Only.** Individuals employed through contracts with temporary services or professional staffing agencies will be utilized only for short-term situations. (3-30-01)

**032. Conflict of Interest/Nepotism.** Agency policies regarding conflict of interest/nepotism should address the award of work to consultants and contractors. (See Sections 024 and 025 of these rules. Also Ref. Section 18-1359, Idaho Code.) (3-16-04)

**043. Not to Be Treated as Employees.** Independent contractors, their staff or consultants must not be treated as employees. Appointing authorities must comply with current Internal Revenue Service guidance on independent contractor and employee definitions. (3-16-04)

**(BREAK IN CONTINUITY OF SECTIONS)**

**061. ANALYSIS OF CLASSIFICATIONS.**

The Division of Human Resources ~~shall~~ will assist appointing authorities in the analysis of positions in determining proper classification and ~~shall~~, at the determination of the administrator, will conduct independent classification reviews of the various ~~departments~~ agencies. ~~(4-5-85)~~ (8-20-08)T

**(BREAK IN CONTINUITY OF SECTIONS)**



**064. AMENDMENT OF CLASSIFICATION SCHEDULE.**

**01. Changes To Classifications.** Whenever it is necessary to establish or delete a classified position or to revise a position's responsibilities, the appointing authority will submit proposed changes to the administrator. (3-30-01)

**02. Approval.** Each appointing authority, prior to establishing any new position within the ~~department~~ agency, ~~shall~~ will obtain the approval of the administrator for the classification of such positions and their assignment to a pay grade in the compensation schedule. Approval by the administrator of the Division of Financial Management for sufficiency of funds is also required. ~~(3-30-01)~~(8-20-08)T

**03. Assignment to Pay Grade Required.** No person will be appointed to, employed in, or paid for services in any classified position until the position has been established, classified, and assigned to a pay grade in accordance with these rules. (3-30-01)

**(BREAK IN CONTINUITY OF SECTIONS)**

**070. COMPENSATION OF EMPLOYEES.**

**01. Assignment to Pay Grade.** As a basis for pay equity, the Division of Human Resources will use a combination of point factoring and market data to determine the relative value of each classification. (Ref. Rule Subsection 074.01 and Section 67-5309B, Idaho Code) (8-20-08)T

~~02. The Hay System Factoring.~~ The Division of Human Resources will use the Hay method ~~of point factoring~~ to determine the relative value of each classification, and as a basis for internal pay equity. (Ref. Section 67-5309B, Idaho Code) ~~(3-16-04)~~(8-20-08)T

**023. Salary Surveys.** The Division of Human Resources will conduct or approve salary surveys, to determine salary ranges that represent labor market average rates for Hay point factored positions in classified service. (3-16-04)

~~034. Relevant Labor Markets.~~ Labor markets used for wage comparison ~~shall~~ will be based on ~~the normal~~ recruiting markets for specific job classifications. Consultation with various appointing authorities will also contribute to labor market determination. ~~(3-16-04)~~(8-20-08)T

**a.** When the competition for employees is the local area market, the comparison will be made from a survey representing public and private employers in the state of Idaho. (3-16-04)

**b.** For classifications with a regional recruiting area, the comparator market will be from public and private employers from the neighboring states and Idaho. For those with no private counterparts, the comparator market will be state governments, including, but not limited to, Arizona, Colorado, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. ~~(3-16-04)~~(8-20-08)T

**c.** Recruitment and retention issues will be used to determine the need for additional special market surveys. (3-16-04)

~~04. Salary Schedule.~~ ~~The administrator shall adopt the salary ranges for the pay grades in Section 67-5309C, Idaho Code, in a public meeting after notice, and a current salary schedule shall be made available to the public and all appointing authorities.~~ ~~(3-16-04)~~

**05. Compensation ~~Plan~~ Schedule.** Significant changes to components of the compensation plan ~~shall~~ will be presented in a public meeting after notice. ~~(3-30-01)~~(8-20-08)T

**071. ~~COMPENSATION PLAN REVIEWS~~ MERIT INCREASE MATRIX.**

Salary increases must be based on a merit increase matrix approved by the Division of Human Resources. Shift and geographic premium pay, bonuses, reinstatements, transfers, promotions, and recruitment and retention awards are not subject to a matrix. (8-20-08)T

~~01. Review of Compensation Schedule. The Division of Human Resources in cooperation with the various appointing authorities shall conduct reviews of the compensation plan. (3-30-01)~~

~~02. Affirmation of Factoring. In the review of classifications, the factoring of a class may be affirmed if there has been no significant change in the duties of the classification and the factoring appears to be correct. (7-1-93)~~

**072. OPERATION OF COMPENSATION PLAN.**

**01. Authorized Pay Rate.** No employee in the state classified service ~~shall~~ will be paid at a rate less than the minimum nor greater than the maximum rate of the pay grade assigned to the classification, ~~except~~ as provided in Section 67-5309C(b)(+), Idaho Code. (3-16-04)(8-20-08)T

**02. Starting Salary.** The starting salary for a new appointee may be anywhere within the pay grade assigned to the employee's classification and is at the appointing authority's discretion considering available budget, market, and relation to existing staff salaries. (Ref. Section 67-5309C(b), Idaho Code) (3-16-04)

**03. Payline Exceptions.** Temporary assignments to a new pay grade may be made by the administrator pursuant to Section 67-5309(c)(b)(i), Idaho Code. Such assignments apply to an entire classification for the purpose of recruitment or retention and will be reviewed annually to determine the need for continuance. (3-16-04)

**04. Salary After Reappointment from Layoff.** ~~An~~ Employees appointed by the agency that laid them off (Ref. Rule Subsection 101.01 and ~~Rule~~ Section 146) will be paid in the current pay grade for the classification to which reappointed or at the same payrate ~~he or she~~ the employee received immediately preceding layoff, whichever is greater, but not to exceed the maximum of the current pay grade. (3-16-04)(8-20-08)T

**05. Salary Upon Transfer.** (7-10-88)

**a.** A transfer between ~~departments~~ agencies (Ref. Rule Section 125) in the same classification or one of equal pay grade does not require a change in the employee's salary, but a lower or higher rate may be negotiated between the employee and the appointing authority. (3-16-04)(8-20-08)T

**b.** If the transfer is to a classification of lower pay grade (demotion), the employee's salary is negotiable between the employee and appointing authority within the lower pay grade. (3-16-04)

**06. Salary Upon Reinstatement.** Unless related to reemployment after a lay off, the salary of a reinstated employee (Ref. Rule Section 124) is negotiable between the employee and appointing authority in the current pay grade for the classification in which the employee has reinstatement privileges. (3-16-04)(8-20-08)T

**07. Salary Upon Downward Reassignment.** When a classification is reassigned downward the employee's salary will be protected to the maximum within the new pay grade. (3-16-04)

**08. Salary Upon Return from Military Duty.** An employee who returns to state service from active military duty in accordance with the provisions of Sections ~~65-5108 or 65-512~~, Idaho Code, ~~shall~~ and USERRA will be paid at the comparable rate in the current pay grade for the classification to which ~~he or she~~ was assigned prior to leaving for military service. (3-30-01)(8-20-08)T

**073. CALCULATION OF PAY.**

**01. Standard Calculation of Pay.** For other than police, correctional officers, or fire employees, pay ~~shall be~~ is calculated in the following order: (3-30-01)(8-20-08)T

- a. Holiday pay; (12-10-90)
- b. All hours worked on a holiday as overtime; (12-10-90)
- c. All hours worked over forty (40) in the workweek as overtime, excluding occasional or sporadic work and traded time; (12-10-90)
- d. Vacation, sick and other paid or unpaid leaves; and (12-10-90)
- e. All remaining hours worked at the employee's regular rate of pay, ~~with the optional use of earned administrative leave.~~ (8-20-08)T

**02.** **Shift Differential.** Additional compensation paid to employees (including temporary or part-time employees) who work specific, designated hours. Shift differential ~~pay shall be calculated according to Rule 075 and is paid in addition to any other compensation.~~ (Ref. Sections 67-5302(~~1920~~), 67-53298, Idaho Code; Rules ~~010.34, 010.417, 010.4257, 010.48, 010.50, and Subsection 073.032~~) Shift differential may be awarded in amounts up to and including twenty-five percent (25%) of hourly rates, based on local market practice for similar jobs. (Ref. Section 67-5309(u), Idaho Code. (~~3-16-04~~)(8-20-08)T

**023.** **Calculation of Pay for Police, Correctional Officers, and Fire Employees.** Police, correctional officers, and fire employees on a twenty-eight (28) day work schedule ~~shall will~~ be compensated as described ~~above in Subsections 073.01 and 073.02 of these rules,~~ except that overtime ~~shall will~~ be calculated based on one hundred sixty (160) hours in a twenty eight (28) day period instead of forty (40) hours in a workweek, ~~and earned administrative leave shall be calculated based on eighty (80) hours in a biweekly pay period instead of on a weekly basis.~~ (~~3-30-01~~)(8-20-08)T

**034.** **Holiday Pay Calculation.** (7-1-87)

a. ~~All classified employees of like classification, shall be treated equally with reference to hours of employment, Paid time off for holidays, and vacation leave is a benefit and must be allocated in a substantially similar manner to all employees in the same classification.~~ (Ref. Section ~~67-5326~~ 59-1607, Idaho Code) (~~3-30-01~~)(8-20-08)T

b. A full-time employee will receive holiday pay in accordance with the number of hours the employee works on a regular workday. If the employee's schedule is so irregular that a regular workday cannot be determined, the employee will receive eight (8) hours of holiday pay. An employee must receive some paid leave, wages or salary for the pay period in which the holiday occurs to receive the holiday benefit. (3-16-04)

c. ~~A part-time employee who has a regular work schedule shall be paid for a holiday in the same ratio as eight (8) hours is to a forty (40) hour work week, which for calculation purposes converts to two tenths (.20) x hours normally worked.~~ To avoid inequities with regard to the Family Medical Leave Act (FMLA) during holiday weeks, if an employee is recording all hours for the week as Family Medical "Leave Without Pay," no hours will be coded on the holiday. Therefore, in both Paragraphs 073.03.b. and 073.03.d. of these rules, the holiday will not be counted toward the twelve (12) weeks of family medical leave. (~~3-16-04~~)(8-20-08)T

d. If a part-time employee's hourly schedule is so irregular that a normal workweek cannot be determined, the holiday benefit is in the same proportion that the hours the employee works during a week in which a holiday occurs relate to forty (40). (3-16-04)

e. Schedules resulting in holiday time off in excess of eight (8) hours ~~must only may~~ be approved ~~in such a way as to treat all members of the affected job classification equally by the appointing authority if included in the agency compensation plan.~~ Appointing authorities may also suspend flex schedules during holiday weeks ~~or may grant administrative leave~~ or otherwise adjust work schedules to ensure ~~equity~~ internal consistency. (~~3-30-01~~)(8-20-08)T

**045.** **Reduction of Salary.** The salary of an employee receiving more than the lowest rate of the pay

grade for his ~~or her~~ classification may be reduced to a lower rate within the pay grade by the appointing authority for disciplinary reasons enumerated in ~~Rule~~ Section 190 of these rules. (3-16-04)(8-20-08)T

~~05. Temporary Merit Increases.~~ Temporary merit increases shall not be calculated retroactively. (Ref. Section 67-5309C(b)(ii), Idaho Code) (7-10-88)

~~06. Department Salary Administration Policies.~~ Each department shall adopt and file with the administrator current salary administration policies for the following actions to insure fairness and equity for all employees within that department: agency must develop a compensation plan. Each agency compensation plan must be designed to consider recruitment and retention and ensure pay equity within the organization. (Ref. Section 67-5309B, Idaho Code) (3-30-01)(8-20-08)T

- ~~a. Merit increases and bonuses (Section 67-5309C(b), Idaho Code, and Rule 073.05.); (7-1-94)~~
- ~~b. Reclassification (Rule 067); (4-5-85)~~
- ~~c. Demotions (Rule 179); (3-16-04)~~
- ~~d. Intradepartmental transfers (Rule 125); (3-16-04)~~
- ~~e. Failure to complete promotional probationary periods (Rule 150.); (3-16-04)~~
- ~~f. Promotions (Rule 169); (3-16-04)~~
- ~~g. On-call time (Rule 010.49); (3-16-04)~~

~~07. Salaries for Temporary Appointments.~~ Except as provided by for in these following rules, salaries for employees hired under temporary and project-exempt appointments will be governed by Section 59-1603, Idaho Code. (4-5-85)(8-20-08)T

(BREAK IN CONTINUITY OF SECTIONS)

~~075. SHIFT DIFFERENTIAL.~~

~~01. Eligibility. (12-10-90)~~

~~a. Shift differential compensation shall be paid if fifty percent (50%) or more of an employee's assigned hours in a workweek occur between 6 p.m. and 7 a.m. Leave hours taken shall be regarded as having been assigned during the same hours that the employee would have worked. (12-10-90)~~

~~b. Shift differential compensation shall be paid for all hours worked by an employee whose primary responsibility is to work in place of an absent employee and, whose assigned schedule varies from nights, days, and/or swing. (3-16-04)~~

~~02. Shift Pay Rate.~~ Shift differential compensation shall be paid at the rate of five percent (5%). (7-1-94)

~~03. Hours Paid at Shift Rate.~~ If an employee qualifies for shift differential pay during a workweek, the shift rate shall be calculated for all hours reported in that week, including holiday pay, overtime and leave taken. The resulting amount of shift differential pay shall be included in the compensation for that pay period. (12-10-90)

~~04. Ineligible Employees.~~ Employees who are ineligible for cash compensation and compensatory time for overtime work are ineligible for shift differential compensation. (Ref. Section 67-5329(1), Idaho Code) (3-30-01)

~~05. Multiple Positions. For an employee who has more than one (1) position, eligibility for shift differential shall be determined by position. (2-6-92)~~

~~076. ALTERNATIVE WORK SCHEDULES AND LOCATIONS.~~

~~An appointing authority may allow alternative work schedules and locations including flexible schedules, job-sharing, and telecommuting when determined to be in the best interests of the state and the employee. Internal policies on such options must be published for all employees and filed with the administrator. If applicable, agency policies must address: (3-16-04)~~

- ~~a. Conditions of participation; (3-16-04)~~
- ~~b. Equipment use and provision; (3-16-04)~~
- ~~c. Workers compensation and liability issues; and (3-16-04)~~
- ~~d. Confidentiality; (3-16-04)~~

~~077. BONUSES.~~

~~01. Performance Bonuses. Up to a total of one two thousand dollars (\$2,000) may be awarded each fiscal year, in recognition of excellent exemplary performance. In extraordinary circumstances exceptions to the two thousand dollar (\$2,000) limit may be granted if approved in advance by the State Board of Examiners. A memo documenting such Documentation of the exemplary performance should and related bonus award must be provided to the employee and placed in their the employee's agency personnel file. (Ref. Sections 59-1603(7) and 67-5309C(b)(iii)D(1), Idaho Code) (3-16-04)(8-20-08)T~~

~~02. State Resource Savings Bonuses Employee Suggestion Award. Appointing authorities may award Up to a total of twenty-five percent (25%) of the savings realized from an employee's idea to save taxpayer dollars, not to exceed one two thousand dollars (\$2,000) may also be awarded each fiscal year, in recognition of an employee's idea to save state resources. Each agency will develop an internal procedure to provide for prompt consideration and distribution of awards. (Ref. Section 67-5309C(b)(iv)D, Idaho Code) (3-16-04)(8-20-08)T~~

~~a. Suggestions, that when implemented result in significant savings, may result in a larger bonus, but such amounts must be approved by the Board of Examiners must be intended to increase productivity, conserve state resources, reduce state costs, or improve the morale of state employees. (3-16-04)(8-20-08)T~~

~~b. Suggestions that may deserve an award larger than two thousand dollars (\$2,000) and suggestions aimed at saving money outside the employee's state agency should be submitted to through the employee's agency first for screening and support, and then routed to the Division of Human Resources for centralized coordination and tracking. The Division of Human Resources will forward the suggestion to the agency able to address implementation. Awards greater than two thousand dollars (\$2,000) must be approved in advance by the State Board of Examiners. (3-16-04)(8-20-08)T~~

~~c. Employee suggestion awards may be funded from the expense category (personnel, operating, or capital) from which the savings were realized. (Ref. Section 67-5311(1), Idaho Code) (8-20-08)T~~

~~078. -- 079. (RESERVED).~~

~~080. RECRUITMENT.~~

~~The administrator shall will cooperate with the appointing authority of each department agency and with the director of the Department of Commerce and Labor in the operation of a coordinated recruiting program. (4-5-85)(8-20-08)T~~

(BREAK IN CONTINUITY OF SECTIONS)

**082. METHODS OF RECRUITMENT.**

For the purpose of establishing eligibility registers, there are three (3) methods of recruitment: open competitive, ~~department~~ agency promotional, or statewide promotional. The scope of advertising and outreach for each approach will vary with agency preference, needs, and labor market strategies. ~~(3-16-04)~~(8-20-08)T

**083. ~~(RESERVED)~~ MOVING EXPENSE REIMBURSEMENT.**

**01. Reimbursement Limitations.** The appointing authority may reimburse moving expenses for current or newly hired state employees in an amount less than or equal to ten percent (10%) of the employee's base salary or fifteen thousand dollars (\$15,000), whichever is less. Moving expense reimbursements must comply with the State Board of Examiners' State Moving Policy and Procedures that are in effect at the time the move takes place. ~~(3-16-04)~~(8-20-08)T

**02. Exceptions to Reimbursement Limitations.** Exceptions to the expense reimbursement limits set forth in Subsection 083.01 of these rules may be granted if approved in advance by the appointing authority. ~~(3-16-04)~~(8-20-08)T

**084. ANNOUNCEMENT OF RECRUITMENT.**

**01. Distribution of Announcements.** The announcement of each open-competitive recruitment ~~shall~~ will be supplied to the appropriate local offices of the Idaho Department of ~~Commerce and~~ Labor and to other locations determined necessary by the administrator to develop a register of eligibles. If the open competitive recruitment has been requested by the appointing authority in lieu of a promotional recruitment, it ~~shall will~~ be his ~~or her~~ responsibility to post or otherwise distribute the announcement so it can be seen by all employees of that ~~department~~ agency prior to its expiration date. (Ref. Rule Section 169) ~~(3-16-04)~~(8-20-08)T

**02. Posting of Promotional Announcements.** The announcement for each promotional recruitment ~~shall will~~ be supplied to the appointing authority of each affected ~~department~~ agency. It ~~shall will~~ be his ~~or her~~ responsibility to post, electronically communicate, or otherwise distribute such announcement so it can be seen by all employees in the ~~department~~ agency prior to the expiration date. ~~(3-16-04)~~(8-20-08)T

(BREAK IN CONTINUITY OF SECTIONS)

**086. APPLICATIONS.**

**01. Form.** All applications ~~shall must~~ be filed in the form ~~prescribed~~ approved by the administrator. ~~(3-16-04)~~(8-20-08)T

**02. Filing of Applications.** Applications are currently accepted by internet application system, mail, personal delivery, electronic mail and FAX to the Division of Human Resources. An application will also be considered timely if any Job Service or agency human resources office receives and date stamps it by the closing date, notifies the Division of Human Resources, and ensures that it is delivered to the Division of Human Resources by close of the next business day. (3-16-04)

**03. Application by Military Personnel.** An application will be accepted after the closing date of the announcement from a person who was serving in the armed forces, or undergoing service-connected hospitalization of no more than one (1) year following discharge, during any period in which the announcement was open. The application must be submitted within one hundred twenty (120) days of the applicant's separation from the armed forces or hospitalization and prior to the expiration of the register established as a result of an examination. ~~The applicant must be a resident of Idaho when application is made.~~ (Ref. Sections 65-502~~3~~ and 67-5309(f), Idaho Code) ~~(3-16-04)~~(8-20-08)T

**04. Application by Disabled Veterans.** A disabled veteran may file an application at any time up until a selection for any classification for which the Division of Human Resources maintains a register as a source for future job openings or for which a register is about to be established, provided ~~he or she~~ the veteran has not already been examined twice for the same classification, does not have current eligibility on that register, or is not serving in a classification competitive position in the same ~~or higher~~ pay grade as the classification for which application is made. ~~The applicant must be a resident of Idaho when application is made.~~ (Ref. Sections 65-502~~3~~, 65-507 and 67-5309(f), Idaho Code) ~~(3-16-04)~~(8-20-08)T

**05. Promotion of Entrance Probationary Employee.** Any classified employee on entrance probation may file an application for a promotional opportunity and be placed on a register but may not be appointed until permanent status has been attained. (Ref. Rule Subsections 159.01. and 169.03.) (3-16-04)

**06. Disclosure of Information for Hiring Purposes.** By submitting an application, an individual is deemed to authorize disclosure of confidential information to state agencies for purposes of screening, testing, interviewing and hiring. (Ref. Section 9-340C, Idaho Code). (12-10-90)

**(BREAK IN CONTINUITY OF SECTIONS)**

**092. PREPARATION OF EXAMINATIONS.**

**01. Content of Examinations.** Examinations may include any questions, tests or criteria designed to evaluate the suitability of applicants for job openings within a classification. So far as is practical, promotional examinations ~~shall~~ will be similar to corresponding open-competitive examinations and the same standards ~~shall~~ will be applied in determining scores. (3-30-01)

**02. Job Analysis and Confidentiality.** Contents of each examination ~~shall~~ will be determined by the Division of Human Resources' ~~staff~~ on the basis of appropriate professional techniques and procedures of job analysis and test development. No information concerning the specific content of the examination ~~shall~~ will be divulged to unauthorized personnel by Division of Human Resources' ~~staff~~ or other personnel who have access to the examinations. ~~(4-5-85)~~(8-20-08)T

**03. Subject-Matter Experts.** The Division of Human Resources' ~~staff~~ may, at ~~their~~ its discretion, collaborate with appointing authorities, incumbents, subject-matter experts, or other qualified persons in the preparation of examinations. ~~(8-1-81)~~(8-20-08)T

**093. CONDUCT AND RATING OF EXAMINATIONS INCLUDING VETERANS' PREFERENCE POINTS.**

**01. Designation of Examiners.** The examinations will be conducted and rated by persons designated by the administrator. (8-1-81)

**02. Scoring of Examinations.** Each examination ~~shall~~ will be rated for final scores on the basis of one hundred (100) point maximum. The Division of Human Resources' ~~staff~~ ~~shall~~ will use appropriate statistical and professional techniques and procedures in determining passing points and final scores. ~~(3-30-01)~~(8-20-08)T

**03. Veterans Preference.** (3-16-04)

**a.** ~~War~~ Veterans and disabled veterans points, when applicable under state law, ~~shall~~ will be added to the final score achieved in the examinations, notwithstanding the fact that the augmented final score may exceed one hundred (100) points. Veterans preference points are only applicable when the applicant is a resident of Idaho. Five (5) percentage points will be added to the earned rating of any veteran, as defined in Section 65-502, Idaho Code, and the widow or widower of any veteran, as defined in Section 65-502, Idaho Code, as long as the widow or widower remains unmarried. Pursuant to Section 65-504, Idaho Code, ten (10) percentage points will be added to the earned rating of any disabled veteran, as defined in Section 65-502, Idaho Code, or to the unmarried widow or widower of

the same, or the spouse of any eligible disabled veteran who cannot qualify for any public employment because of a service-connected disability. Employment registers will be established in order of final score except that the names of all five (5) and ten (10) percentage point preference eligibles resulting from the merit system will be placed on the register in accordance with their augmented rating. (Ref. Sections 65-506 and 67-5309(f), Idaho Code)  
(~~3-16-04~~)(8-20-08)T

b. ~~War~~ Veterans and disabled veterans preference points ~~shall~~ must not be ~~added to the raw score in order used~~ to achieve a passing score.  
(~~3-16-04~~)(8-20-08)T

**04. Failing Score.** Failure in any part of the examination may disqualify the applicant in the entire examination and from having his ~~or her~~ name placed on the register. Final scores ~~shall~~ will be computed in accordance with weights assigned the individual factors in the total examination.  
(~~4-5-85~~)(8-20-08)T

**05. Use of Alternate Announcement.** An examination may be rated for another classification under current announcement at the discretion of the administrator.  
(3-16-04)

**06. Waiver of Examination.** Notwithstanding other provisions in these rules, when ten (10) or fewer applications are received from applicants meeting minimum qualifications for a position announcement and there is no existing register, the announced examination may be waived by the administrator. These applicants will be eligible for appointment and their placement on the register will take into account veterans' preference. When using registers developed in this manner, appointing authorities will provide the opportunity for placement interviews for each applicant on the register.  
(3-16-04)

**07. Examination Upon Reclassification.** An employee occupying a position which is reclassified (Ref. Rule Subsection 067.01) may be required at the discretion of the administrator to pass an examination for the classification to which reclassified.  
(~~3-16-04~~)(8-20-08)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**100. ELIGIBILITY REGISTERS.**

Eligibility registers ~~shall be~~ are established by the Division of Human Resources' ~~staff~~ to provide for fair and impartial selection for entrance into the state classified service and for promotion on the basis of competitive merit examinations.  
(~~4-5-85~~)(8-20-08)T

**101. TYPES OF ELIGIBILITY REGISTERS.**

There are four (4) kinds of eligibility registers:  
(4-5-85)

**01. Reemployment Preference Registers.** Registers with reemployment preference ~~shall~~ for a given classification will contain the names of classified employees of permanent status who have been laid off or notified of a pending layoff except limited service appointments. (See Rule Sections 140 and 146 of these rules).  
(~~3-16-04~~)(8-20-08)T

**02. ~~Departmental~~ Agency Promotional Registers.** ~~Departmental~~ Agency promotional registers for a given classification will contain the names of classified employees in a given ~~department~~ agency who successfully passed an ~~departmental~~ agency promotional examination for the class. (Ref. Rule Subsection 086.05) (~~3-16-04~~)(8-20-08)T

**03. Statewide Promotional Registers.** Statewide promotional registers ~~shall~~ for a given classification will contain the names of all classified employees in all state ~~departments~~ agencies who successfully passed a statewide promotional examination for the class. (Ref. Rule Subsection 086.05)  
(~~3-16-04~~)(8-20-08)T

**04. Open Competitive Registers.** Open competitive registers ~~shall~~ for a given classification will contain the names of applicants who successfully passed an open competitive examination for the classification.  
(~~3-16-04~~)(8-20-08)T



102. PLACEMENT ON REGISTER.

01. **Score Order.** Eligible candidates ~~shall~~ will be placed on the register for a given classification ranked in descending numerical order based on their final score on the examination for such classification. ~~(3-16-04)~~(8-20-08)T

02. **Veterans' Preference.** Eligible veterans or surviving spouses entitled to five (5) point preference ~~shall~~ will be placed on the open competitive register in accordance with their final score on the examination augmented by preference points. (Ref. Rule Subsection 093.03, and Section 65-5064, Idaho Code) ~~(3-16-04)~~(8-20-08)T

03. **Disabled Veterans' Preference.** Eligible ten percent (10%) or more disabled veterans, Purple Heart recipients, or surviving spouses entitled to ten (10) point preference ~~shall~~ will be placed ~~at the top of~~ on the open-competitive register ~~above all other non-preference candidates~~ in order of their final score on the examination augmented by preference points. Veterans who have a current service-connected disability of thirty percent (30%) or more will be offered an interview when their final score on the hiring list places them within the top ten (10) qualified candidates. If more than ten (10) thirty percent (30%) or greater disabled veterans place in the top ten (10) qualified scores of a hiring list, at least ten (10) will be offered an interview. (Ref. Rule Subsection 093.03 and Section 65-506, Idaho Code) ~~(3-16-04)~~(8-20-08)T

04. **Veterans' Preference Points for Initial Appointment Only.** The additional points added by reason of veterans' preference ~~shall~~ will be used the first time a qualified veteran is hired by a state agency and not for the purpose of promotions. (Ref. Section 65-5064, Idaho Code) Initial appointments do not include: ~~(3-16-04)~~(8-20-08)T

- a. Jobs held by patients, inmates, or students employed at a state institution; (8-20-08)T
- b. Temporary or casual employment; or (8-20-08)T
- c. An office filled by election. (8-20-08)T

(BREAK IN CONTINUITY OF SECTIONS)

104. REMOVAL OF NAMES.

01. **Reasons Specified.** Names may be removed from any eligibility register~~(s)~~ by the administrator because of: ~~(3-16-04)~~(8-20-08)T

a. Appointment of the eligible candidate from the register to the classification or appointment to a classification in a higher pay grade. (3-16-04)

b. A statement by the eligible candidate that he ~~or she~~ is not willing to accept appointment under conditions previously specified. ~~(3-16-04)~~(8-20-08)T

c. Physical, mental or other disability where it has been demonstrated that the disability will prevent the eligible candidate from satisfactorily performing the essential functions of the position with reasonable accommodation for the disability. (3-16-04)

d. Failure of an eligible candidate to respond within seven (7) calendar days to documented good faith inquiry concerning availability for employment. (3-16-04)

e. The eligible candidate's conduct renders him ~~or her~~ unsuitable for the position or classification for which he ~~or she~~ applied. ~~(3-16-04)~~(8-20-08)T

- f. Written rejection of the eligible candidate for good cause by an appointing authority as approved by the administrator. (3-30-01)
  - g. Conviction of an eligible candidate of any felony. (3-30-01)
  - h. False statements of material facts given in the eligible candidate's application for employment or any subsequent examinations or interviews. (3-30-01)
  - i. Dismissal of an eligible candidate from state service. (3-30-01)
  - j. Paying, promising to pay, or giving any money, thing, service or consideration to any person, directly or indirectly, for any service or influence given, used, or promised towards securing appointment. (3-16-04)
  - k. Directly or indirectly obtaining information regarding examinations to which, as an applicant, he ~~or she~~ is not entitled. ~~(3-16-04)~~(8-20-08)T
  - l. Refusing an interview or refusing to accept a position under the conditions set forth in the recruitment announcement. (3-16-04)
  - m. Having been certified for a probationary appointment for three (3) separate positions in the same classification in the same ~~department~~ agency and not been accepted for employment for good cause. ~~(3-16-04)~~(8-20-08)T
  - n. Declining three (3) separate offers of employment or reemployment without good cause. (3-16-04)
- 02. Limitations and Duration of Removal.** The administrator will determine if the candidate will be removed from all registers, registers for a particular classification, or registers for specified agencies. All removals will be for one (1) year unless otherwise authorized by the administrator. (3-16-04)

**(BREAK IN CONTINUITY OF SECTIONS)**

**111. ADEQUATE REGISTERS.**

A register with at least five (5) eligible candidates ~~shall be~~ is adequate. If no register exists or if there are less than five (5) eligible candidates, appointing authorities may: ~~(3-30-01)~~(8-20-08)T

- 01. Selection from Inadequate Register.** Hire an eligible candidate listed on an inadequate register. (3-30-01)
- 02. Provisional Appointment.** Make a provisional appointment pursuant to ~~Rule~~ Subsection 119.054 of these rules. ~~(3-16-04)~~(8-20-08)T
- 03. Request Certification.** Request the administrator authorize certification from an eligibility register for a comparable classification. (3-16-04)
- 04. Special Request.** Request specialized recruitment. (3-30-01)

**(BREAK IN CONTINUITY OF SECTIONS)**

**119. APPOINTMENTS, REINSTATEMENTS, TRANSFERS, AND RESIGNATIONS.**

- ~~**01. Form.** Appointing authorities shall notify the administrator of each appointment on the prescribed~~

~~form.~~

~~(2-6-92)~~

**021. Reemployment Preference Register.** New appointments to a classification within an department agency are not permissible if there is an departmental agency reemployment preference register (Ref. Rule Subsection 101.01) for that classification with names of eligibles who are willing to accept employment.

~~(3-16-04)~~(8-20-08)T

**032. Credited State Service.** Except as provided by Rules Section 040 and Subsection 250.02 of these rules, no classified credited state service shall accrue to employees for any service under temporary, project exempt, or nonclassified appointments.

~~(7-1-87)~~(8-20-08)T

**043. Probationary Period Required.** All appointments to positions in the state classified service whenever adequate eligibility registers exist for the classification ~~shall be~~ are probationary appointments except as otherwise provided in Rule Sections 040 and 150 of these rules.

~~(3-16-04)~~(8-20-08)T

**054. Provisional Appointment.**

(7-1-93)

**a.** A provisional appointment may be authorized in the absence of an adequate register. (Ref. Section 67-5309(k), Idaho Code)

~~(3-16-04)~~(8-20-08)T

**b.** In nominating a person for provisional appointment, the appointing authority will transmit to the administrator an application for employment of the nominee. If the applicant meets the minimum qualifications established for the classification, the nominee may be provisionally appointed to fill an existing vacancy in a position for no longer than thirty (30) calendar days after establishment of an adequate register. Successive provisional appointments of the same individual or successive provisional appointments to the same position will not be permitted unless specifically authorized by the administrator.

(3-16-04)

**c.** Provisional incumbents will be given opportunity to take the examination for the classification of position. Any provisional employee who fails to pass such an examination within certifiable range or who has an opportunity to take such an examination and has not done so will be separated no later than thirty (30) calendar days after the establishment of an adequate register of eligibles.

(3-16-04)

**120. LIMITED SERVICE APPOINTMENTS.**

**01. Designation.** Classified positions expected to be of limited duration due to funding or nature of the position or project must be identified and designated in advance of announcement.

(3-16-04)

**02. Permanent Status and Expedited Layoff.** Employees appointed under limited-service appointments have permanent classified status after successful completion of probation. These employees have the same rights and responsibilities as other permanent employees but may be subject to expedited layoff pursuant to Rule Paragraph 140.031.c. of these rules.

~~(3-16-04)~~(8-20-08)T

**03. Limited Service Agreement.** Appointing authorities making limited-service appointments ~~shall~~ must prepare, no later than the date of appointment, a written agreement for signature of both the employee and appointing authority describing the non-career nature of the appointment, potential for layoff, and the duration the employee may expect to work. Renewals and/or updated agreements are required every two (2) years. A copy of the agreement ~~shall~~ must be submitted to the administrator.

~~(3-16-04)~~(8-20-08)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**122. TEMPORARY APPOINTMENTS (NON-CLASSIFIED).**

Temporary appointments ~~shall be~~ are limited to one thousand three hundred eighty-five (1,385) hours of work in any twelve (12) month period for any one (1) department agency. Both calculations ~~shall~~ begin on the date of the original temporary appointment. An applicant who is hired as a temporary employee from a hiring list created from a certified

register, and serves at least one thousand forty (1,040) hours of continuous service, may be hired by the employing agency into that position in classified service as an entrance probationary employee without further examination. The announcement for the temporary position from which the certified register was created must indicate that the temporary position has the potential of becoming a permanent classified position. The classified position must be in the same classification and at the same location as announced. (Ref. Section 67-5302(33), Idaho Code)

~~(3-16-04)~~(8-20-08)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**124. REINSTATEMENTS.**

**01. Eligibility.** As determined by the administrator, a current or former employee ~~shall~~ will be eligible for reinstatement to a classification in which he ~~or she~~ held permanent status, or if deleted its successor, or to another classification of equal or lower pay grade under the following conditions (salary treatment is covered by ~~Rule Subsection 072.05 of these rules~~). ~~(3-16-04)~~(8-20-08)T

**a.** Reinstatement is limited to a period equal to the length of the employee's probationary and permanent employment combined. (3-30-01)

**b.** The current or former employee must have separated from the classification for which reinstatement is desired without prejudice. A former employee must also have separated from state classified service without prejudice. (3-16-04)

**c.** The current or former employee must meet the current minimum qualifications of the classification to which reinstatement is desired. (3-16-04)

**02. Reinstatement Prohibited.** Reinstatement of a current or former employee is not permissible as long as there is ~~a departmental~~ an agency register (Ref. Rule Subsection 101.01) for that classification with names of eligibles who have reemployment preference status. ~~(3-16-04)~~(8-20-08)T

**03. Examination.** The administrator may require a current or former employee to pass an examination for the classification to which reinstatement is desired. (3-16-04)

**04. Probationary Period.** An appointing authority may negotiate for a probationary period as a condition of reinstatement except where prohibited. (Ref. Rule Subsections 124.05 and 145.01). (3-16-04)

**05. Return from Military Duty.** An employee returning from military leave without pay (Ref. Rule Subsection 250.05) who is relieved or discharged from military duty under conditions other than dishonorable ~~shall~~ will be, upon application, reinstated in his ~~or her~~ former position, or one of comparable classification, without loss of credited state service, status, or pay as prescribed by Sections 46-216, ~~65-508, and 65-511~~ and 65-512, Idaho Code, USERRA, or the Military Selective Service Act, Title 38, Chapter 43, U.S. Code. Application for reemployment must be made ~~within ninety (90) calendar days after separation from military duty or from hospitalization continuing after discharge up to one (1) year~~ in accordance with the provisions of USERRA. Salary treatment is covered by Rule Subsection 072.08 of these rules. ~~(3-30-01)~~(8-20-08)T

**125. TRANSFERS.**

**01. Authority to Transfer.** An appointing authority may transfer an employee at any time from one position to another in the same classification. (3-16-04)

**02. Transfer Within Pay Grade.** An appointing authority may transfer an employee from a classification in which he ~~or she~~ holds permanent status to another classification allocated to the same pay grade for which the employee meets the minimum qualifications. ~~(3-16-04)~~(8-20-08)T

**03. Probationary Period.** An appointing authority may negotiate with an employee for a probationary period as a condition for a voluntary transfer. Voluntary probation is not allowed for intradepartmental agency transfers. (Ref. Rule Section 150) ~~(3-16-04)~~(8-20-08)T

**04. Limitation.** Transfers will not be used to abridge an employee's rights in reduction in force prescribed by Rule Sections 140 through 147 of these rules. ~~(7-1-87)~~(8-20-08)T

**05. Transfer Between ~~Departments~~ Agencies.** An employee ~~shall be~~ is eligible for transfer between ~~departments~~ agencies in the same classification in which he ~~or she~~ holds permanent status or to another classification in the same or lower pay grade for which the employee meets the minimum qualifications. Accrued vacation and sick leave ~~shall will~~ be transferred in accordance with Rules Subsections 230.04 and 240.02 of these rules. Salary treatment is covered by Rule Subsection 072.04 of these rules. ~~(3-16-04)~~(8-20-08)T

**06. Restriction.** Transfer of an employee between ~~departments~~ agencies is not permissible as long as there is a ~~departmental~~ agency register with reemployment preference status (Ref. Rule Subsection 101.01) for the classification in the ~~department~~ agency to which transfer is desired with names of eligibles who are willing to accept reemployment. ~~(3-16-04)~~(8-20-08)T

**07. Examination.** The administrator may require an employee transferring between classifications to pass an examination for the classification to which transfer is desired. (3-16-04)

**08. Involuntary Transfer.** Notice and an opportunity to be heard must be given to any employee subject to an involuntary transfer. ~~(Ref. Rules 010.39 and 200.01.a.)~~ ~~(3-16-04)~~(8-20-08)T

## **126. RESIGNATION.**

**01. Notice.** A classified employee may resign at any time. A resignation is effective at the time designated by the employee, without need for written or advance notice, or acceptance of the resignation by the ~~department~~ appointing authority. ~~(6-11-89)~~(8-20-08)T

**02. Rescission and Reinstatement.** Once an employee has submitted a resignation, reinstatement is in the discretion of the ~~department~~ appointing authority as provided in Rule Section 124 of these rules. The ~~department~~ appointing authority may but is not required to allow an employee to rescind a resignation prior to its effective date. ~~(3-16-04)~~(8-20-08)T

**03. Resignation in Lieu of Dismissal.** An employee may resign in lieu of being dismissed for cause. (7-1-93)

## **127. -- 128. (RESERVED).**

## **129. ACTING APPOINTMENT TO A POSITION.**

**01. Conditions for Acting Appointment.** At the discretion of an appointing authority, a classified employee with permanent status may be appointed to a position in a classification of higher pay grade within his ~~or~~ her own ~~department~~ agency in an acting capacity whenever: ~~(3-16-04)~~(8-20-08)T

a. The incumbent of the position in the higher classification is on authorized leave of absence; or (3-16-04)

b. A vacancy exists and there is no ~~departmental~~ agency register with reemployment preference status (Ref. Rule Subsection 101.01) with names of eligibles who are willing to accept reemployment, nor adequate ~~departmental~~ agency register for the classification. ~~(3-16-04)~~(8-20-08)T

**02. Minimum Qualifications.** To be eligible for an acting appointment, an employee must meet the minimum qualifications of the class. (4-5-85)

**03. Notification.** Appointing authorities ~~shall~~ must notify the administrator of each acting appointment

no later than the effective date of the appointment unless an exception is specifically authorized by the administrator.  
(~~3-16-04~~)(8-20-08)T

**04. Effective Date.** The effective date of each acting appointment may be retroactive to the beginning of the pay period during which approval is granted. (3-16-04)

**(BREAK IN CONTINUITY OF SECTIONS)**

**140. REDUCTION IN FORCE.**

**01. Conditions for Layoff.** An appointing authority may lay off an employee whenever necessary due to: (3-16-04)

**a.** Shortage of funds or work; (3-16-04)

**b.** Reorganization; (3-16-04)

**c.** The end of a limited service appointment; (3-16-04)

**d.** An employee's failure to complete interagency promotional probation when demotion options are not available; or (3-16-04)

**e.** The abolishment of one (1) or more positions (ref. Rule Section 066). (3-16-04)

**02. Layoff Decisions.** Layoff decisions must not be based on race, color, national origin, gender, age, religion, disability, or political affiliation. Layoffs ~~shall~~ **must** be accomplished in a systematic manner with equity for the rights of classified employees and ~~shall~~ **must** not do away with an employee's right to problem solving, or appeal if the layoff is in fact a dismissal. (~~3-16-04~~)(8-20-08)T

**03. Assessment for Adverse Impact.** In planning and conducting a reduction in force, the appointing authority ~~shall~~ **must** consider the effect layoff units and positions to be abolished may have on the composition of the agency work force. If layoff units ~~and/or~~ exclusions are established, adverse impact of protected classes ~~shall~~ **must** be assessed. The appointing authority ~~shall~~ **must** administer the reduction in force consistent with state and federal laws, and rules and guidelines governing adverse impact. (~~3-16-04~~)(8-20-08)T

**04. Layoff by Position.** Reduction in force ~~shall~~ **must** be by classification of position. (~~3-16-04~~)(8-20-08)T

**a.** Reduction in force may be limited to or specifically exclude employees appointed under selective certification, (Section 112) for bona fide occupational qualifications, or appointed to a classification with minimum qualification specialties. Inclusions or exclusions must include or exclude all incumbents of the classification appointed under similar selective certification, or the same option or minimum qualification specialty and must be approved in advance by the administrator. (3-16-04)

**b.** An appointing authority may petition the administrator to exclude an individual ~~or individuals~~ from a reduction in force whose retention may be required to meet agency mission critical needs. Requests must provide a documented rationale and exclusions must be approved in advance by the administrator. (~~3-16-04~~)(8-20-08)T

**c.** Limited-service appointments are defined by the project, program, or function for which the appointments were made. When a limited service project is completed or funding concluded, the limited service appointee is separated from state service as a layoff. However, limited service appointees have no reemployment preference and will not displace other regular permanent or limited services staff via voluntary demotion in lieu of layoff. (3-16-04)

**05. Layoff Unit.** Reduction in force ~~shall~~ must be ~~department~~ agency-wide or by organizational unit designated for layoff purposes. Layoff units (~~subdivisions of an agency for layoff purposes~~) are geographic, programmatic, or other identified subdivisions of an agency designated for layoff purposes by the appointing authority, ~~and~~ They must be approved by the administrator before the effective date of the layoff. Organizational layoff unit designations must be renewed with a change in appointing authority or administrator.

~~(3-16-04)~~(8-20-08)T

**06. Reduction of Hours Worked.** An involuntary reduction in the number of hours worked for a selected position ~~or positions shall~~ constitutes a layoff unless there is an equal reduction of hours worked for all positions in the same classification in the ~~department~~ agency or approved layoff unit for a limited period of time, ~~i.e.~~ such as a furlough.

~~(3-16-04)~~(8-20-08)T

**07. Downward Reclass.** A material change in duties of one (1) or more positions resulting in an employee's reclassification to a classification allocated to one (1) pay grade lower ~~shall~~ does not constitute a layoff. (Ref Section 067). More than one (1) pay grade change downward is considered a layoff, unless the change of duties is disciplinary (Ref. Section 190).

~~(3-16-04)~~(8-20-08)T

**141. CALCULATION OF RETENTION POINTS.**

There will be an evaluation of all employees in the classification in the ~~department~~ agency or organizational unit affected by the reduction in force based on a retention point system. Retention points are derived from experience as described in performance evaluations and classified credited state service. Qualified ~~war~~ veterans are given preference through additional retention points. (Ref. Subsection 141.053), The appointing authority will determine a process for the impartial assessment of evaluations to assign points as follows:

<b>Overall Performance Level Documented As:-</b>	<b>Retention Points Earned Per Hour of Credited State Service</b>
<del>Superior or equivalent</del>	<del>.100</del>
<del>Very Good or equivalent</del>	<del>.075</del>
<del>Satisfactory or equivalent</del>	<del>.050</del>
<del>Needs Improvement or equivalent</del>	<del>.0</del>
<del>Unsatisfactory</del>	<del>.0</del>

<u>Exemplary Performance</u>	- .100 points
<u>Solid Sustained Performance</u>	- .075 points
<u>Achieves Performance Standards</u>	- .050 points
<u>Does Not Achieve Performance Standards</u>	- .0 points

~~(3-16-04)~~(8-20-08)T

**01. No Performance Evaluation on File for a Twelve-Month Period.** All credited state service for which there is no performance evaluation ~~shall~~ will receive seventy-five thousandths (.075) points per hour. A supervisor's failure to document performance in a timely manner cannot be used to disadvantage an employee during retention point calculation.

~~(3-16-04)~~(8-20-08)T

**a. Grace period.** Supervisors have ninety (90) days after each two thousand eighty (2,080) hours an employee works to complete the performance evaluation documentation. During that ninety (90) day time frame, the evaluation may be written to cover the two thousand eighty (2,080) hours or extended to also cover the time frame up to the date of the evaluation.

(3-16-04)

b. Changes in prior periods not allowed. Once an evaluation has been signed by the supervisor, employee, manager, and other applicable reviewers, the document may not be changed, unless the change is a result of a problem solving dispute resolution. (3-16-04)

**02. Calculation of Retention Points Since Last Evaluation.** The most recent performance evaluation should be used to pro-rate retention points when calculating credited state service since that evaluation, unless that evaluation occurred more than two thousand eighty (2,080) hours from the date of calculation. In such cases, points are calculated in conformance with ~~Rule~~ Subsection 141.01 of these rules. (~~3-16-04~~)(8-20-08)T

**03. Qualified War Veterans (War Era) Preference.** ~~War~~ Veterans (~~War Era~~) as defined in Title 65, Chapter 5, Idaho Code, shall will receive preference by the addition of retention points equivalent to three (3) years of ~~satisfactory~~ service at a level that achieves performance standards. (Ref. Section 65-501, Idaho Code) (~~3-16-04~~)(8-20-08)T

**04. Calculation Date Cutoff.** No points will be calculated for the sixty (60) days prior to the effective date of the layoff. (3-16-04)

**05. Audit of Retention Points.** Each employee ~~shall be~~ is entitled to an audit of retention points by an independent auditor designated by the administrator in cases of dispute between the appointing authority and the employee. The request for audit must be filed with the appointing authority within five (5) calendar days of the employee's receipt of layoff notification. The decision of the independent auditor ~~shall be~~ is binding on both parties unless an appeal is filed within thirty-five (35) calendar days from the date of the auditor's notification to the affected parties. (~~7-1-87~~)(8-20-08)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**143. REDUCTION IN FORCE DETERMINATION AND NOTIFICATION.**

**01. Identification of Classifications.** The appointing authority will identify the classification(+) of positions to be reduced or eliminated. (~~3-16-04~~)(8-20-08)T

**02. Calculation of Retention Points.** Retention points will be calculated for all employees assigned to the classification of position including those serving in underfill positions (Ref. Rule Subsection 0101.604). Retention points need not be calculated where layoff involves a single-incumbent class. (~~3-16-04~~)(8-20-08)T

**03. Order of Reduction in Force.** The order of reduction in force ~~shall will~~ be by type of appointment held by the employee in the affected classification(+) as follows: first to be laid off are provisional appointees, next the entrance probationary appointees, and then the permanent appointees including those serving a voluntary probation. Employees ~~shall will~~ be placed on the layoff list beginning with the employee with the highest number of retention points. Employee layoffs ~~shall will~~ be made from the layoff list in inverse order. When two (2) or more employees have the same combined total of retention points, retention ~~shall will~~ be determined in the following sequence: (Ref. Rule Paragraph 150.02.c.) (~~3-16-04~~)(8-20-08)T

a. The employee with the highest total retention points for the past thirty-six (36) months. (3-16-04)

b. Random selection. (4-5-85)

**04. Notification to Affected Employees.** Each employee affected ~~shall will~~ be notified in writing of layoff and the rationale for the decision at least fifteen (15) calendar days prior to the effective date. Notification ~~shall will~~ include a copy of the ~~departmental~~ agency layoff procedure and a copy of the computation of retention points when required (Ref. Rule Subsection 142.02). (~~3-16-04~~)(8-20-08)T

**05. Notification to Administrator.** The appointing authority ~~shall must~~ give written notice of layoff to the administrator at least fifteen (15) calendar days prior to its effective date and ~~shall must~~ provide a list of persons



affected by the layoff with their retention point calculations and ~~shall~~ must indicate which employees will be laid off.  
(4-5-85)(8-20-08)T

(BREAK IN CONTINUITY OF SECTIONS)

145. USE OF REGISTERS WITH REEMPLOYMENT PREFERENCE.

01. Priority for Reemployment by Agency that Conducted the Layoff. (3-16-04)

a. The employee who has been laid off, or ~~officially notified~~ given official, written notice of a pending layoff date (Ref. Rule Subsection 143.05) ~~shall~~ will be offered reemployment to a position in the classification from which laid off or layoff is pending, before any person outside that agency may be promoted to, transferred to, reinstated or appointed to that classification by an appointing authority of that ~~department or~~ agency. Appointing authorities may reassign or transfer individuals who are in the same classification within their ~~department~~ agency but may not demote, promote, reclassify, or make acting appointments to that classification. If that ~~department~~ agency determines a need to fill that classification, the employee scheduled for lay off or who was laid off has first priority for that position. (Ref. Rule Subsections 125.04 and 125.08) Extenuating circumstances due to short term budget, workload, location, or other complexities may be used by the appointing authority to request a temporary waiver of this rule by the administrator.  
(3-16-04)(8-20-08)T

b. When attempting to fill vacancies for a classification where a lay off occurred, the ~~department or~~ agency ~~shall~~ will provide an opportunity to interview and ~~shall~~ will make their hiring selection from the individuals their agency laid off from the classification, including those separated from state service under Rule Subsection 150.02 of these rules and those that took a voluntary demotion in lieu of layoff.  
(3-16-04)(8-20-08)T

c. Individuals being returned to the classification from which they were laid off will be reinstated with the same salary, permanent status and their sick leave balance restored. If the pay minimum has increased, see Rule Subsection 072.043 of these rules.  
(3-16-04)(8-20-08)T

02. Consideration for Hire by Other Agencies. For promotional opportunities, internal agency candidates are normally considered before outside recruitment occurs, including other agencies' laid off candidates. However, individuals who have been laid off must be offered the opportunity to interview before other agencies consider candidates from statewide promotional or open-competitive recruitments.  
(3-16-04)

03. Employment by Other Agency. Individuals may be reappointed or reinstated if eligible. The salary of an employee re-hired after a layoff is negotiable between the employee and new appointing authority in the current pay grade for the classification in which the employee is appointed.  
(3-16-04)

04. Return to Register. If an individual finds another agency's position unsatisfactory or does not satisfactorily complete a voluntary probation period, he ~~or she~~ may be placed back on a register for the remainder of their twelve (12) month time frame. Individuals appointed to a position, other than the classification from which laid off, will remain on preference register status for the remainder of the twelve (12) month period if otherwise eligible.  
(3-16-04)(8-20-08)T

(BREAK IN CONTINUITY OF SECTIONS)

147. VOLUNTARY DEMOTION IN LIEU OF LAYOFF.

Within their layoff unit, an employee with permanent status may choose to accept a voluntary demotion rather than be laid off. Demotion options are limited to a classification, or if deleted, its successor, in which the employee held permanent status in the ~~department~~ agency. Such demotion ~~shall~~ will not be permitted if it causes the layoff of an employee with greater retention points.  
(3-16-04)(8-20-08)T

**01. Eligibility.** (3-16-04)

**a.** Qualified. Employee must meet the classification's current minimum qualifications and any minimum qualification specialties. (3-16-04)

**b.** Exclusion. Limited service appointees are not eligible to take any voluntary demotion that would result in the displacement of other employees. However, voluntary demotions to a vacant position are allowed with the approval of the appointing authority. (3-16-04)

**02. Acceptance.** To accept a voluntary demotion rather than a layoff, the employee must notify the appointing authority in writing of their decision no later than three (3) working days after written notification of the layoff and opportunity to demote to a specific position. (3-16-04)

**148. -- 149. (RESERVED).**

**150. PROBATIONARY PERIODS.**

**01. Probationary Period Required.** Except as provided in Rule Section 040 of these rules, every appointment and promotion to a classified position ~~shall be~~ is probationary, or in the absence of adequate registers, provisional. ~~(7-1-87)~~(8-20-08)T

**02. Types of Probationary Periods.** The probationary period serves as a working test period to provide the ~~department~~ agency an opportunity to evaluate a probationary employee's work performance and suitability for the position. There are three (3) types of probationary periods: ~~(3-30-01)~~(8-20-08)T

**a.** Entrance probation is the probationary service required of an employee at the time of his ~~or her~~ original appointment or any subsequent appointment to state classified service excluding reinstatement and transfer, the duration of which ~~shall be~~ is one thousand forty (1,040) hours of credited state service except for peace officers (defined in Section 19-5101, Idaho Code), who ~~shall~~ must serve two thousand eighty (2,080) hours. ~~(3-30-01)~~(8-20-08)T

**b.** Promotional probation is the probationary service required when an employee is promoted, the duration of which ~~shall be~~ is one thousand forty (1,040) hours of credited state service except for peace officers (defined in Section 19-5101, Idaho Code), who ~~shall~~ must serve two thousand eighty (2,080) hours. ~~(3-30-01)~~(8-20-08)T

**c.** Voluntary probation is ~~the probationary period negotiated an agreement~~ an agreement between employees ~~seeking inter agency transfer, voluntary demotion, and/or reinstatement~~ and the hiring appointing authority for interagency employment actions such as reinstatement, transfer, or voluntary demotion. A voluntary probation is not to be used for employment actions within the agency. The probationary period is negotiable but may not exceed one thousand forty (1,040) hours of credited state service except for peace officers (defined in Section 19-5101, Idaho Code), who may serve up to two thousand eighty (2,080) hours. ~~Voluntary probation agreements must be approved by the administrator and kept on file with the Division for the duration of the probationary period.~~ ~~(3-16-04)~~(8-20-08)T

**03. Extension of Probationary Period.** Upon ~~petition by an appointing authority that demonstrates~~ written request demonstrating good cause, the administrator may extend the probationary period of an employee for an additional specified period not to exceed one thousand forty (1,040) hours of credited state service. Petitions Extension ~~must be received by the administrator~~ occur before an employee has worked one thousand forty (1,040) hours or two thousand eighty (2,080) hours for peace officers. (Ref. Section 67-5309(j), Idaho Code) ~~(3-16-04)~~(8-20-08)T

**04. Interruption of Probationary Period.** The probationary period in any classification must be completed within a single ~~department~~ agency uninterrupted by ~~resignation,~~ termination (Ref. Rule Subsection 152.02) or dismissal (Ref. Rule Section 190). An employee who separated during the probationary period must begin a new probationary period upon reappointment or promotion. ~~(3-16-04)~~(8-20-08)T

**05. Acting and Temporary Service Credit.** At the request of the hiring agency, the administrator will

allow temporary and acting appointment service time in a given classification to be used toward fulfilling the entrance probationary requirement in that classification as established in Section 67-5309(j), Idaho Code. The temporary or acting appointment duties must be substantially the same as the regular permanent appointment. (Ref. Section 67-5309(x), Idaho Code, and Rule Sections 122 and 129 and Subsection 150.01) (8-20-08)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**152. SEPARATION DURING PROBATION.** (3-30-01)

**01. Notification.** If a probationary employee does not serve satisfactorily, the appointing authority, ~~shall~~ must, no later than thirty (30) calendar days after the expiration of the probationary period, provide the employee and the Division of Human Resources a performance evaluation indicating unsatisfactory performance. (Ref. Section 67-5309(j), Idaho Code and Rule Subsection 210.04) ~~(3-16-04)~~(8-20-08)T

**02. During Entrance and Voluntary Probation.** (3-30-01)

**a.** An employee who does not serve satisfactorily during the entrance or voluntary probation ~~shall~~ must first be given the opportunity in writing to resign without prejudice; an employee who fails to resign may be terminated without cause assigned and without the right to file for problem-solving or an appeal. (Ref. Section 67-5309(j), Idaho Code, and Subsection 210.04) ~~(3-16-04)~~(8-20-08)T

**b.** Notice to the employee of termination for unsatisfactory service ~~shall~~ must be made not later than fifteen (15) calendar days prior to the effective date of termination, unless there are extenuating circumstances. ~~(7-1-87)~~(8-20-08)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**159. STATUS AND TENURE.**

**01. Probationary Promotions.** Employees serving a promotional probationary period ~~shall~~ have continued permanent status in the classification from which promoted until they are certified as having satisfactorily completed the promotional probationary period in the classification to which promoted. (Ref. Rule Sections 151, 152-03, and 153) ~~(3-16-04)~~(8-20-08)T

**02. Tenure of Employment.** All employment in the state classified service ~~shall be~~ is without definite term except where the term may be specified by law, or under conditions of a limited-service appointment. (Ref. Rule Section 120) ~~(3-16-04)~~(8-20-08)T

**160. -- 168. (RESERVED).**

**169. PROMOTIONS.**

**01. Use of Promotional Registers.** (7-1-93)

**a.** Preference for Promotion. Whenever practical, a vacancy in a classified position ~~shall~~ must be filled by the promotion of an employee in the ~~department~~ agency in which the vacancy occurs. (Ref. Section 67-5309(g), Idaho Code) ~~(3-30-01)~~(8-20-08)T

**b.** Exception. An appointing authority may request that a position be filled from a statewide promotional register (Ref. Rule Subsection 101.03) or an open competitive register (Ref. Rule Subsection 101.04) whenever he ~~or she~~ determines that such an appointment will best serve the interests of the ~~department~~ agency. ~~(3-16-04)~~(8-20-08)T

c. ~~Departmental~~ Agency Registers with Reemployment Preference Status. Promotions to a classification are not permissible as long as there is an ~~departmental~~ agency register with reemployment preference status (Ref. Rule Subsection 101.01) for the classification with names of eligible candidates who are willing to accept reemployment. ~~(3-16-04)~~(8-20-08)T

**02. Inter~~departmental~~agency Promotions.** All ~~interdepartmental~~ interagency promotions ~~shall~~ must be made using statewide promotional registers (Ref. Rule Subsection 101.03) ~~(7-1-87)~~(8-20-08)T

**03. Eligibility for Promotion.** Promotional appointees must have permanent status (Ref. Rule Section 159) and must meet the minimum qualifications of the promotional classification. ~~(3-16-04)~~(8-20-08)T

**04. Promotion, In-Grade.** To reflect unique agency organization design, an agency may choose to request an internal competitive process to recognize the advancement of an employee with permanent status from a position occupied in one classification to a position in another classification having greater points, more responsibility, or a unique specialty area, but within the same pay grade. With the approval of the administrator, an in-grade promotion will be treated in all regards as a promotion. ~~(8-20-08)T~~

170. -- 178. (RESERVED).

**179. DEMOTIONS.**

Demotions are reductions of an employee from a position which the employee occupies in one classification to a position in another classification in a lower pay grade. Demotions authorized under these rules apply to both probationary and permanent status employees who meet the minimum qualifications of the classification to which demoted. ~~(3-16-04)~~(8-20-08)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**190. DISCIPLINARY ACTIONS.**

**01. Cause for Disciplinary Actions or Separation From State Service.** Dismissal, suspension, demotion, or the reduction in pay, of a classified employee, may occur for any of the following causes during the employee's employment: ~~(3-16-04)~~(8-20-08)T

a. Failure to perform the duties and carry out the obligations imposed by the state constitution, state statutes, or rules of the ~~department~~ agency or the Division of Human Resources and Idaho Personnel Commission. ~~(3-16-04)~~(8-20-08)T

b. Inefficiency, incompetency, or negligence in performing duties, or job performance that fails to meet established performance standards. ~~(4-5-85)~~(8-20-08)T

c. Physical or mental incapability for performing assigned duties, if a reasonable accommodation cannot be made for the disabling condition. ~~(Ref. Rule 010.56)~~ ~~(3-16-04)~~(8-20-08)T

d. Refusal to accept a reasonable and proper assignment from an authorized supervisor. (4-5-85)

e. Insubordination or conduct unbecoming a state employee or conduct detrimental to good order and discipline in the ~~department~~ agency. ~~(4-5-85)~~(8-20-08)T

f. Intoxication or being under the influence of alcohol, or the misuse of medications or controlled substances, while on duty. ~~(4-5-85)~~(8-20-08)T

g. Careless, negligent, or improper use or unlawful conversion of state property, equipment, or funds. (4-5-85)

- h.** Use of any influence which violates the principles of the merit system in an attempt to secure a promotion or privileges for individual advantage. (4-5-85)
- i.** Conviction of official misconduct in office, or conviction of any felony, or conviction of any other crime involving moral turpitude. (4-5-85)
- j.** Acceptance of gifts in exchange for influence or favors given in ~~an~~ the employee's official capacity. ~~(4-5-85)~~(8-20-08)T
- k.** Habitual pattern of failure to report for duty at the assigned time and place. (4-5-85)
- l.** Habitual improper use of sick leave. (4-5-85)
- m.** Unauthorized disclosure of confidential information from official records. (4-5-85)
- n.** Absence without leave. (4-5-85)
- o.** Misstatement or deception in application for employment. (4-5-85)
- p.** Failure to obtain or maintain a current license or certificate lawfully required as a condition in performance of duties. (4-5-85)
- q.** Prohibited participation in political activities. (Ref. Section 67-5311, Idaho Code) (4-5-85)

**02. Suspension for Investigation.** An appointing authority may suspend with pay an employee for investigation of disciplinary causes enumerated ~~above~~ in Subsection 190.01 of these rules. Each suspension for investigation ~~shall~~ will be superseded by reinstatement to duty, dismissal or disciplinary suspension within thirty (30) calendar days of the suspension for investigation or within an extension of an additional thirty (30) calendar days approved by the administrator. Further extensions may be granted with the approval of the Administrator. ~~(3-30-01)~~(8-20-08)T

**03. Disciplinary Suspension.** An appointing authority may suspend without pay an employee for discipline for causes enumerated above. Disciplinary suspension of an employee with permanent status ~~shall be~~ is subject to appeal by the employee to the Commission. ~~(3-16-04)~~(8-20-08)T

**04. Suspension on Felony Charges.** An appointing authority may suspend without pay an employee upon the issuance of a complaint, an information or indictment for felony charges. Such suspensions may remain in effect during the time such charges are pending. Full reinstatement of all benefits and salary that the employee would have otherwise been entitled ~~shall~~ must be provided by the appointing authority to the employee upon a subsequent finding that charges or information were without grounds or the employee was not found guilty. For the purpose of this rule, a judgment withheld under Rule 33(d) of the Idaho Rules of Criminal Procedure is a conviction. ~~(7-1-87)~~(8-20-08)T

**05. Notice To Administrator.** Whenever an appointing authority considers it necessary to take disciplinary action against an employee, he ~~or she shall~~ must notify the employee and the administrator concurrently in writing; and ~~shall~~ must set forth the specific rule(s) violated and the reasons for the action. Suspensions with pay for investigation (Ref. Rule Subsection 190.02) may be made without prior notice to the employee; in this case, the appointing authority ~~shall~~ must notify the administrator as soon as practical. ~~(7-1-87)~~(8-20-08)T

**191. -- 199. (RESERVED).**

**200. PROBLEM-SOLVING AND DUE PROCESS PROCEDURES.**

- 01. Overview of Procedures.** (3-30-01)
- a.** The due process procedure deals with the disciplinary matters set forth in Section 67-5315(2),

Idaho Code, dismissals, suspensions without pay, and demotions, and with all involuntary transfers. The due process procedure generally requires the employee receive notice and an opportunity to respond before a disciplinary decision or involuntary transfer is made by the ~~department~~ agency. Decisions regarding disciplinary dismissals, suspensions without pay, and demotions are appealable in accordance with Rule Section 201 of these rules. ~~(3-30-01)~~(8-20-08)T

b. The problem-solving procedure deals with all matters not specifically reserved for the due process procedure. Problem solving decisions ~~are~~ may not ~~appealable~~ be appealed to the Commission except as authorized by Section 67-5316, Idaho Code. ~~(3-16-04)~~(8-20-08)T

**02. Establishment of ~~Departmental~~ Agency Problem-Solving and Due Process Procedures.** Each participating ~~department~~ shall agency must maintain written employee problem-solving and due process procedures, which have been approved by the administrator for conformity to law and ~~this~~ Section 200 of these rules. ~~(7-1-98)~~(8-20-08)T

**03. Eligibility and Time for Filing Under Problem-Solving Procedure.** Any classified employee with permanent, provisional or entrance probationary status may file under the problem-solving procedure as defined by Section 67-5315(1), Idaho Code. An employee ~~shall~~ must file under the problem-solving procedure in writing not later than ten (10) working days after being notified or becoming aware of a nondisciplinary matter which may be handled through the problem-solving procedure; however, if the filing alleges an ongoing pattern of harassment or illegal discrimination, the ~~department~~ agency is strongly encouraged to waive any time limits. (Ref. Rule Subsection 200.03). The time limit for filing ~~shall~~ will be extended due to the employee's illness or other approved leave, up to ten (10) days after return to the job. The ~~department~~ agency may accept a filing that is or appears to be filed late. Department Agency policies may provide for waiver of time elements or any intermediate step of the problem-solving procedure upon mutual agreement of the employee and appointing authority. ~~(3-16-04)~~(8-20-08)T

**04. Elements of the Problem-Solving Procedure.** The procedure ~~shall~~ must contain a statement from the ~~department~~ agency head encouraging employees to use the procedure for any nondisciplinary, job-related matters, and encouraging the employee, supervisors, and upper-level managers and administrators to resolve the matter at the lowest management level possible within the organization. The statement ~~shall~~ must also provide a means whereby ~~department~~ agency representatives can obtain timely authority, if needed, to resolve the matter. The procedure ~~shall~~ must require the employee to make a reasonable attempt to discuss the issue with the immediate supervisor before filing. After a written filing is received, the procedure ~~shall~~ must provide for such additional levels of management as are appropriate in the ~~department~~ agency. The procedure ~~shall~~ must also provide for the use of an impartial mediator upon agreement by the employee and ~~department~~ agency. Timelines ~~shall~~ must not exceed five (5) working days between each step. The procedure ~~shall~~ must also inform the employee that he ~~or she~~ is entitled to be represented by a person of the employee's own choosing at each step of the procedure, except the initial informal discussion with the immediate supervisor. Two (2) or more employees may join in a single filing under the problem-solving procedure. Retaliation for filing under the problem-solving procedure, for participating as a witness, or representative ~~shall be~~ is expressly prohibited. This procedure ~~shall~~ does not apply to unsatisfactory performance during entrance probation (Ref. Sections 67-5309(j), 67-5315(1), Idaho Code; Rule Sections 152 and 153). ~~(3-16-04)~~(8-20-08)T

**05. Filings Alleging Sexual Harassment or Other Illegal Discrimination.** Each ~~department's~~ agencies's problem-solving procedure ~~shall~~ must provide an optional alternative procedure for an employee to file allegations of sexual harassment or discrimination based on race, color, sex, national origin, religion, age, or disability. The procedure ~~shall~~ must expressly prohibit sexual harassment and discrimination. Employees ~~shall~~ must be informed of their right to file complaints with the Idaho Human Rights Commission. The alternative procedure ~~shall~~ must designate a specific person or persons to receive and investigate such filings, and ~~shall~~ must require that the investigation and resolution of them be conducted with maximum regard for confidentiality. ~~(7-1-98)~~(8-20-08)T

**06. Elements of Due Process Procedure.** An ~~department~~ agency must provide notice and an opportunity to respond before making a decision to impose any disciplinary sanction or involuntary transfer, as set forth in Section 67-5315(2), Idaho Code. With respect to notice, an ~~department~~ agency must provide notice of the contemplated action, the basis or reason for the contemplated action, and an explanation of the evidence supporting the contemplated action. The notice ~~shall~~ must be provided to the employee and administrator concurrently. With respect to the opportunity to respond, the employee must be given the opportunity to respond to the notice and present reasons why the contemplated action should not be taken. The opportunity to respond ~~shall~~ must not occur later than ten (10) working days after the employee has received notice, unless both the employee and ~~department~~ agency agree

otherwise in writing. After the employee has responded, or after the period to respond has expired or has been waived in writing by the employee, whichever occurs first, the appointing authority, or designee, *shall must* make and implement the ~~department's~~ agencies's decision not later than ten (10) working days thereafter, excluding days the appointing authority, or designee, is out of the office, unless both the employee and ~~department~~ agency agree otherwise in writing. The procedure *shall must* inform the employee of his ~~or her~~ right to be represented by a person of the employee's own choosing during the opportunity to respond. The procedure *shall must* also provide for the use of an impartial mediator upon agreement by the employee and ~~department~~ agency. The procedure does not apply to unsatisfactory performance during entrance and promotional probation (Ref. Sections 67-5309(j), 67-5315(2), Idaho Code; Rule Sections 150 through ~~Rule~~ 153). The due process procedure is complete when the appointing authority, or designee, mails or delivers a decision to the affected employee. The decision *shall must* also be sent to the administrator concurrently. ~~(3-16-04)~~(8-20-08)T

**07. Notification.** A copy of the approved problem-solving and due process procedures *shall must* be furnished and explained to each employee with permanent, provisional or entrance probationary status in the ~~department~~ agency concerned. ~~(7-1-98)~~(8-20-08)T

**08. Assistance to Departments Agencies.** The administrator *shall will* assist ~~departments~~ agencies whenever requested in the development or revision of their ~~departmental~~ agency problem-solving and due process procedures. ~~(7-1-98)~~(8-20-08)T

## **201. APPEAL PROCEDURE.**

**01. Idaho Rules of Administrative Procedure.** In addition to the following rules on appeals and petitions for review, the "Idaho Rules of Administrative Procedure of the Attorney General" on contested cases, IDAPA 04.11.01.000 et seq., apply with the following exceptions, which are inconsistent with the Commission's statute or practice: IDAPA 04.11.01.055, 202, 240, 250, 270.01, 280, 300, 302, 651, 720, 730, 740, 790, 821.02, and 860. Petitions for rulemaking and declaratory rulings are addressed in Sections 270 and 271 of these rules. (3-16-04)

**02. Filing of Appeal and Appearances.** Every appeal filed with the Commission *shall must* be written. The appeal *shall must* be filed at the Division of Human Resources which serves as the office of the Commission, and *shall must* state the decision that is being appealed and the action requested of the Commission. The Commission *shall must* serve a copy of the appeal on the respondent and upon the legal counsel for the Commission. Notices of appearance and notices of substitution of counsel need not be filed by deputy attorneys general or members of law firms already representing a party in an appeal or petition for review. ~~(3-16-04)~~(8-20-08)T

**03. Time for Appeal.** An appeal from a decision of an appointing authority ~~shall be~~ is deemed to be timely filed if received at the office of the Commission within thirty-five (35) calendar days after completion of the ~~departmental~~ agency due process procedure. Personal delivery or deposit in the United States mail, postage prepaid, of a written notification to the affected employee of the appointing authority's decision *shall* constitutes completion of the ~~departmental~~ agency due process procedure. An appeal of a decision or action of the administrator or staff must be filed at the office of the Commission within thirty-five (35) calendar days of personal delivery of notice of the decision or action, deposit of the notice in the United States mail, postage prepaid, or deposit of the notice in Statehouse mail. ~~(3-16-04)~~(8-20-08)T

**04. Non-Jurisdictional Appeals.** Appeals which are non-jurisdictional may be dismissed without motion by the hearing officer, the chair of the Commission, or his ~~or her~~ designee. If a hearing officer orders such a dismissal, the dismissal may be appealed to the Commission as a petition for review pursuant to ~~Rule~~ Subsection 202.01 of these rules. If the chair of the Commission orders such a dismissal, it constitutes the final order of the Commission and may be appealed pursuant to Sections 67-5317(3) and 67-5318, Idaho Code. ~~(3-16-04)~~(8-20-08)T

**05. Setting of Hearing.** Within fifteen (15) days after receiving the appeal from the Commission, the hearing officer *shall must* consult with the parties to set a mutually agreeable date for hearing. The hearing officer may thereafter postpone or continue the hearing for good cause. ~~(3-16-04)~~(8-20-08)T

**06. Filing of Documents.** Once an appeal is referred to the hearing officer, all documents relating thereto *shall must* be filed directly with the hearing officer during the pendency of the appeal. Copies of all

documents submitted ~~shall~~ must be provided simultaneously to opposing counsel and unrepresented parties.

~~(7-1-87)~~(8-20-08)T

**07. Burden of Proof.** In disciplinary actions, the appointing authority has the burden of proving cause for the discipline by a preponderance of the evidence. In all other actions, the appellant has the burden of proof by a preponderance of the evidence.

(7-1-87)

**08. Open Hearing.** Every hearing ~~shall be~~ is public, unless the hearing officer closes the hearing for good cause. Individual parties may represent themselves (pro se) or be represented by an attorney.

~~(3-16-04)~~(8-20-08)T

**09. Protective Orders.** The hearing officer may issue protective orders limiting access to information obtained in the course of a hearing.

(7-1-93)

**10. Decision of Hearing Officer.** The hearing officer ~~shall~~ must issue a decision in the form of a preliminary order. The preliminary order ~~shall~~ must explain the right to file a petition for review under Section 67-5317, Idaho Code. The preliminary order, consisting of such findings of fact, conclusions of law and orders as are necessary, together with the record of the proceedings ~~shall~~ must be filed at the office of the Commission. A copy of the hearing officer's decision ~~shall~~ must be promptly sent or delivered to the parties. A motion for reconsideration under Section 67-5243, Idaho Code, is not permitted.

~~(3-16-04)~~(8-20-08)T

**11. Procedure for Award of Attorney Fees and Costs.** As part of his preliminary order, the hearing officer ~~shall~~ must make findings as to the entitlement to attorney fees and costs, if any, pursuant to Section 12-117, Idaho Code. If the hearing officer finds a prevailing party is entitled to statutory attorney fees and costs, the prevailing party ~~shall~~ must file a memorandum of costs, including a supporting affidavit stating the basis and method of computation of the amount claimed. The memorandum ~~shall~~ must be filed with the hearing officer not later than ten (10) working days after receipt of the hearing officer's decision or no attorney fees and costs ~~shall~~ must be awarded. Objections to the award of attorney fees and costs ~~shall~~ must be filed not later than ten (10) working days after receipt of the memorandum of costs and supporting affidavit. The hearing officer ~~shall~~ must conduct a hearing on the award of attorney fees and costs within ten (10) days of receiving any objections to the award. If no objections are timely filed with the hearing officer, or if the parties stipulate to have the matter decided on the briefs, no hearing ~~shall be~~ is required. The hearing officer ~~shall~~ determines the amount of the award and ~~shall~~ must make written findings as to the basis and reasons for the award within ten (10) days after the hearing on the award of attorney fees and costs. If no hearing is required, the hearing officer ~~shall~~ must issue his/~~her~~ decision on the award of attorney fees and costs no later than thirty (30) days after receipt of the prevailing party's memorandum of costs and supporting affidavit.

~~(3-16-04)~~(8-20-08)T

**12. Factors Considered in Award of Attorney Fees and Costs.** The following factors ~~shall be~~ are considered in the determination of an award of attorney fees and costs:

(12-10-90)

- a. The time and labor required; (12-10-90)
- b. The experience and ability of the attorney; (12-10-90)
- c. The prevailing charges for like work; (12-10-90)
- d. The amount involved and the results obtained; (12-10-90)
- e. Awards in similar cases; and (12-10-90)
- f. Any other factor that appears pertinent to the award. (12-10-90)

**(BREAK IN CONTINUITY OF SECTIONS)**



**203. REFERRALS FROM FEDERAL AGENCIES ON DISCRIMINATION COMPLAINTS.**

When the Division of Human Resources receives a complaint from a federal agency alleging violation of employment laws, the administrator *shall must* take prompt action to investigate. If the complaint is *department agency* specific, the appointing authority will take necessary actions to ensure the investigation is thorough, staff are fully cooperative, and submit findings and any corrective action plan to the administrator and other proper authorities. ~~(3-16-04)~~(8-20-08)T

**204. -- 209. (RESERVED).**

**210. PERFORMANCE EVALUATIONS.**

**01. Performance Evaluations.** Each *department shall agency must* adopt and maintain a system of employee performance evaluations provided it meets the basic objectives of the state's performance evaluation system as approved by the administrator. ~~(3-30-01)~~(8-20-08)T

**02. Approval of Form.** The Division of Human Resources' staff *shall will* make available a standard format for this purpose. An appointing authority may utilize another form provided it meets the basic performance criteria and ratings and is approved by the administrator. ~~(3-16-04)~~(8-20-08)T

**03. Purpose.** The purpose of performance evaluation is to provide an objective evaluation by the immediate supervisor of an employee's performance in comparison with established expectations for the position; and to identify an employee's strengths and weaknesses and where improvement is necessary. All performance evaluations *shall must* be discussed with affected employee who *shall will* be allowed opportunity to submit written comments regarding the evaluation contents. ~~(3-16-04)~~(8-20-08)T

**04. Use of Evaluations.** Performance evaluations should be used in connection with promotions, transfers, demotions, retentions, separations, and reassignments (Ref. Section 67-5309(h), Idaho Code); and used as the affirmative certification for merit increases and bonuses (Ref. Section 67-5309**~~C~~B(bd)**, Idaho Code); and for certifying a probationary employee to permanent status (Ref. Rule Section 151). Other uses of performance evaluations are optional with the appointing authority. ~~(3-30-01)~~(8-20-08)T

**05. Evaluation Schedule.** All classified employees *shall must* be evaluated after one thousand forty (1,040) hours of credited state service from the date of initial appointment or promotion and after each two thousand eighty (2,080) hours of credited state service thereafter. (Ref. Section 67-5309**~~C~~(bh) and (ji)**, Idaho Code.) Part-time employees *shall must* be evaluated on an annual basis. ~~(3-30-01)~~(8-20-08)T

**06. Retention of Evaluation.** A copy of the performance evaluation *shall must* be retained in *departmental agency* records, and a copy *shall must* be furnished to the employee. The performance rating *shall must* be transmitted to the administrator. Agency records and supporting documentation are subject to review by the Division of Human Resources. All performance evaluation documents *shall must* be copied and forwarded with the employee when an interagency promotion, demotion or transfer occurs. ~~(3-16-04)~~(8-20-08)T

**07. Supervisors' Requirements.** Supervisors are required to manage performance on a consistent basis including completion of performance evaluations on all employees under their direct supervision. (3-16-04)

**211. -- 219. (RESERVED).**

**220. RECORDS.**

**01. Employee Service Records.** (7-1-93)

**a.** For each employee in classified service, the Division of Human Resources' *staff shall* maintain a service record which *shall must* include all personnel transactions pertinent to the employee's employment history. (Ref. Section 67-5309(n), Idaho Code) ~~(3-16-04)~~(8-20-08)T

**b.** Service records or a facsimile thereof for classified employees *shall must* be maintained permanently by the administrator. ~~(3-30-01)~~(8-20-08)T

c. Any employee may at all reasonable times during business hours review his ~~or her~~ service record maintained in the Division of Human Resources or maintained in any ~~department~~ agency. Except for material used to screen and test for employment, all information maintained in an employee's service record ~~shall~~ must be made available to the employee or designated representative upon request. File contents may be corrected if found in error according to the procedure contained in Section 9-342, Idaho Code. ~~(3-30-01)~~(8-20-08)T

**02. Administrative Records.** The administrator ~~shall~~ must permanently maintain a record of the proceedings of the Commission and a record of all hearings of appeals. ~~(3-16-04)~~(8-20-08)T

**03. Employee Personnel Action Documents.** The appointing authority ~~shall~~ must furnish each employee with notice of every personnel action affecting the employee's status, pay, tenure, or other terms and conditions of employment, including a copy of their performance evaluations. ~~(3-30-01)~~(8-20-08)T

**04. Transfers, Reemployment and Promotions Between ~~Departments~~ Agencies.** When an employee seeks a transfer, reemployment, or promotion between ~~departments or~~ agencies, the appointing authority of the hiring ~~department or~~ agency, or designee, ~~shall be~~ is entitled to examine the employee's service record and current agencies performance information before the hiring decision is made. (Ref. Section 67-5309(o), Idaho Code) ~~(3-16-04)~~(8-20-08)T

**221. -- 229. (RESERVED).**

**230. VACATION LEAVE.**

**01. Eligibility.** All classified employees, regardless of status or whether full-time or part-time, ~~shall~~ earn vacation leave and ~~be~~ are eligible to take and be paid for unused vacation leave in accordance with Sections 67-5334, ~~67-5335, and 67-5337~~, Idaho Code. ~~(7-1-87)~~(8-20-08)T

**02. Rate of Accrual.** All credited state service (ref. Sections 67-5332 and 59-1604, Idaho Code, for definitions) ~~shall be~~ are counted in determining leave accrual rate. ~~(4-5-85)~~(8-20-08)T

**03. Mutual Agreement.** Vacation leave requested by the employee may be used only when approved by the ~~department~~ agency. The employee and the ~~department~~ agency ~~shall~~ must mutually agree upon such time or times when vacation leave ~~will~~ least interferes with the efficient operation of the ~~department~~ agency taking into consideration the vacation preference of the employee. ~~(7-1-87)~~(8-20-08)T

**04. ~~Interdepartmental~~ Interagency Transfer.** An employee who is transferred from one state ~~department~~ agency to another ~~department~~ agency ~~shall~~ will be credited with accrued vacation leave by the receiving ~~department~~ agency at the time of transfer. ~~(3-30-01)~~(8-20-08)T

**231. -- 239. (RESERVED).**

**240. SICK LEAVE.**

**01. Eligibility.** Sick leave ~~shall be~~ is earned in accordance with Section 67-5333, Idaho Code. Sick leave ~~shall~~ must only be taken in pay periods subsequent to being earned. ~~(3-30-01)~~(8-20-08)T

**02. ~~Interdepartmental~~ Agency Transfer.** An employee who is transferred from one state ~~department~~ agency to another ~~department~~ agency ~~shall~~ will be credited by the receiving ~~department~~ agency with the amount of sick leave accrued at the time of transfer. ~~(3-30-01)~~(8-20-08)T

**03. Reasons for Use.** Sick leave ~~shall~~ must only be used in cases of actual illness or disability or other medical and health reasons necessitating the employee's absence from work, or in situations where the employee's personal attendance is required or desired because of serious illness, disability, or death and funeral in the family. For purposes of this rule, family means a spouse, child, foster child, parent, brother, sister, grandparent, grandchild, or the same relation by marriage, or legal guardian. ~~(3-16-04)~~(8-20-08)T

~~04. Medical, Dental, or Optical Appointments Leave (MDA). Employees are allowed up to two (2) hours for each occasional appointment without charge to sick leave for personal or family member medical, dental or optical examination or treatment. Occasional appointments are those which are traditionally considered to be preventative, wellness related, or diagnostic. Ongoing treatment for physical or mental illness is not covered by MDA. Use of this benefit may be limited by the appointing authority on a case by case basis where frequency of use is impeding organizational effectiveness or misuse is suspected. If more than two (2) hours are needed for appointments additional time may be charged to sick leave. (Ref. Rule 250.13) (3-16-04)~~

**054. Serious Medical Conditions.** Sick leave may be used in conjunction with Family and Medical Leave. (Ref. Rule Section 242) ~~(3-30-01)(8-20-08)T~~

**065. Notification.** It is the responsibility of the employee to notify his ~~or her~~ supervisor as soon as possible in the event of sickness or injury which prevents the employee from reporting for duty. ~~(4-5-85)(8-20-08)T~~

**076. Donated Leave.** Vacation leave may be transferred to another employee for the purposes of sick leave in accordance with Section 67-5335~~(7)4~~, Idaho Code. Such transfers are to be made from employee to employee. Vacation leave is retained by the donating party until it is converted to sick leave in the receiving employee's account. ~~(3-16-04)(8-20-08)T~~

**087. Sick Leave Abuse.** A predictable and reliable level of attendance is an essential function of almost all positions. Consistent with the provisions of the Americans with Disabilities Act and the Family Medical Leave Act, a supervisor may investigate suspected sick leave abuse including a pattern of unscheduled absences which have a negative impact on the requirements of the job and take appropriate action. When an employee is absent due to illness or injury in excess of three (3) days, a doctor's certificate of justifiable cause for the absence may be required of the employee at the discretion of the immediate supervisor. A doctor's certification of illness or injury may be required of an employee for periods of less than three (3) consecutive working days whenever the immediate supervisor or manager believes special investigation of the absence should be made. (Ref. Rule Section 190 and Section 67-5333, Idaho Code) ~~(3-16-04)(8-20-08)T~~

## 241. WORKERS COMPENSATION AND DISABILITY.

**01. Use of Leave in a Workers Compensation Claim.** In the event of a disability incurred on the job covered by workers compensation, the employee ~~shall~~ will be given the choice of either: ~~(8-20-08)T~~

- a.** ~~1) Leave of absence without pay while receiving workers compensation; or~~ ~~(8-20-08)T~~
- b.** ~~2) Utilizing a portion of accrued sick leave to supplement workers compensation to maintain his or her regular salary.~~ ~~(8-20-08)T~~

**c.** No appointing authority may require an employee to accept sick leave, vacation leave, or compensatory time off for overtime in lieu of workers compensation provided by law. Additionally, an employee may not waive his ~~or her~~ rights to workers compensation and cannot accept earned leave or other benefits in lieu thereof. ~~(4-5-85)(8-20-08)T~~

**02. Layoff After Six Months' Twelve Weeks' Disability.** If the employee becomes disabled, whether or not due to a workers compensation injury, and is unable to return to work after ~~six twelve (6)12 months' weeks'~~ absence or when accrued sick leave has been exhausted, whichever is longer, the employee's position ~~shall~~ will be declared vacant ~~unless otherwise prohibited by state or federal law. The employee's name is certified to a reemployment preference register when the administrator has been notified by the physician that the employee is able to return to work.~~ (Ref. Rule Subsection 101.01) ~~The period of absence is not interrupted by the employee's full return to work for less than two (2) consecutive work weeks. Return to work as part of a rehabilitation program does not interrupt the calculation of the period of absence.~~ ~~(3-30-01)(8-20-08)T~~

**a.** ~~The employee's name shall be certified to a reemployment preference register when the administrator has been notified by the physician that the employee is able to return to work. If an employee is not eligible for the protections of the Family and Medical Leave Act (FMLA), the employee may only take a maximum of twelve (12) weeks absence due to their disability every twelve (12)-month period. The period of absence for such~~

an employee is not interrupted by the employee's full return to work for less than two (2) consecutive work weeks and return to work as part of a rehabilitation program does not interrupt the calculation of the period of absence.

~~(3-16-04)~~(8-20-08)T

- b. Conditional releases will be considered in accordance with the Americans with Disabilities Act. (3-16-04)

**(BREAK IN CONTINUITY OF SECTIONS)**

**243. MATERNITY AND PATERNITY LEAVE.**

**01. Use Of Sick Leave.** Pregnancy, child birth or related medical conditions generally are considered temporary disabilities and ~~shall be~~ are treated as such for sick leave purposes. Maternity and paternity leave ~~shall be~~ are granted under the same conditions and requirements as other compensable and non-compensable leave under these rules, including the Family and Medical Leave Act. ~~(3-16-04)~~(8-20-08)T

**02. Determination of Disability Period.** The employee's physician ~~shall be~~ is considered the primary authority in determining the disability period insofar as compensable sick leave is concerned. ~~(3-16-04)~~(8-20-08)T

**03. Additional Time Off.** Maternity and paternity leave preceding and following the time that the person is disabled ~~shall be~~ is leave without pay unless the employee elects to use accrued vacation leave, ~~earned administrative leave~~ or compensatory time off for overtime. ~~(3-16-04)~~(8-20-08)T

**04. Discrimination Prohibited.** Pregnancy discrimination is prohibited. The employee may continue to work as long as she is physically capable of performing the duties of her position and may return to work as soon as she is physically able as determined by her physician. (3-30-01)

**05. Adoption and Foster Care.** Leave will be granted for adoption and foster care as set forth in the Family and Medical Leave Act. (Ref. Rule Section 242) (3-30-01)

**(BREAK IN CONTINUITY OF SECTIONS)**

**250. SPECIAL LEAVES.**

- 01. Leave of Absence Without Pay.** (7-1-93)

a. Approval. In addition to workers' compensation, family medical leave, disability, or other statewide leave policies, the appointing authority may grant an employee leave without pay for a specified length of time when such leave would not have an adverse effect upon the ~~department~~ agency. The request for leave must be in writing and must establish reasonable justification for approval. ~~(3-16-04)~~(8-20-08)T

b. Reemployment. The appointing authority approving the leave of absence assumes full responsibility for returning the employee to the same position or to another position in a classification allocated to the same pay grade for which the employee meets minimum qualifications. (7-1-87)

c. Exhaustion of Accrued Leave. Unless prohibited by workers compensation, family medical leave, disability, or other statewide leave policies, the appointing authority has discretion on whether the employee is required to exhaust accrued vacation leave, earned administrative leave or compensatory time off for overtime before commencing leave without pay. (Ref. Section 240) ~~(3-16-04)~~(8-20-08)T

d. Resignation. If vacation leave, earned administrative leave and compensatory time off for overtime are not exhausted and the employee resigns from state service while on leave, he ~~or she shall~~ will be paid for such

accruals in accordance with Sections 67-5337~~4~~ and 67-5329~~(3)8~~, Idaho Code.

~~(7-1-87)~~(8-20-08)T

**02. Leave of Absence to Assume a Nonclassified Position.**

~~(7-1-93)~~

~~a. Approval. An appointing authority may approve a leave of absence from classified service to a classified employee to assume a nonclassified position. Such leave of absence shall not extend beyond the time the employee would be eligible for reinstatement to classified service or ninety (90) days past the service of the appointing authority, whichever comes first. (Ref. Rule 124.01.a.)~~

~~(3-16-04)~~

~~b. Credited State Service. An employee on leave of absence to assume a nonclassified position continues to accrue credited state service.~~

~~(3-16-04)~~

**032. Leave Defaults.** When an employee does not have accrued sick leave to cover an entire absence the following leave types ~~shall~~ will be used to the extent necessary to avoid leave without pay: accrued compensatory time; ~~earned administrative leave;~~ and vacation. If abuse of sick leave is suspected see ~~Rule Subsection 240.087 of these rules.~~

~~(3-16-04)~~(8-20-08)T

**043. Military Leave With Pay.** Employees who are members of the National Guard or reservists in the armed forces of the United States ~~who are directed by proper military authority to participate in ordered and authorized field training under the National Defense Act shall receive military leave with pay for a maximum fifteen (15) working days in any one (1) calendar year engaged in military duty ordered or authorized under the provisions of law, are entitled each calendar year to fifteen (15) days of military leave of absence from their respective duties without loss of pay, credited state service or evaluation of performance.~~ Such leave is ~~exclusive of~~ separate from vacation, ~~and~~ sick leave, ~~and~~ holiday, or compensatory time off for overtime. (Ref. Section 46-216, Idaho Code).

~~(4-5-85)~~(8-20-08)T

**054. Military Leave Without Pay.** An employee whose employment is reasonably expected to continue indefinitely, and who leaves his ~~or her~~ position either voluntarily or involuntarily in order to perform active military duty, has reemployment rights as defined in ~~Rule Subsection 124.05 of these rules.~~ The employee ~~shall~~ will either be separated from state service or placed in "inactive" status, at the option of the appointing authority.

~~(3-16-04)~~(8-20-08)T

**065. Administrative Leave of Absence With Pay.** ~~At the discretion of the appointing authority, an employee may be granted administrative leave with pay when such leave is in the best interest of the department. A period of absence from duty with the approval of the appointing authority, or as required or allowed by law or these rules, during which time the employee is compensated. Leaves of absence with pay have no adverse effect on the status of the employee and include the following leaves:~~

~~(8-20-08)T~~

**a.** Vacation leave;

~~(8-20-08)T~~

**b.** Sick leave;

~~(8-20-08)T~~

**c.** Special leave situations; and

~~(8-20-08)T~~

**d.** Compensatory time off for overtime worked.

~~(4-5-85)~~(8-20-08)T

**07. Earned Administrative Leave.**

~~(7-1-93)~~

~~a. Authority for Use. In any week that an employee would be compensated an amount greater than forty (40) hours times the employee's regular rate of pay, an appointing authority may allow the employee to accumulate earned administrative leave to the extent necessary to reduce the cash compensation to forty (40) hours. An appointing authority may allow a part-time employee to accumulate earned administrative leave for the hours worked between the regularly scheduled hours and forty (40) hours. Earned administrative leave shall be calculated based on one hundred sixty (160) hours for police, correctional officers, and fire employees pursuant to Rule 073.02.~~

~~(3-30-01)~~

~~b. Ineligible Employees. Employees who are ineligible for cash compensation and compensatory time~~

~~for overtime work are ineligible for earned administrative leave. (Ref. Section 67-5329(l), Idaho Code). (12-10-90)~~

~~e. Payment and Credited State Service. Earned administrative leave (EAL) balances shall be paid upon transfer or separation. Hours of EAL shall accrue credited state service when worked. (3-30-01)~~

**086. Court and Jury Services and Problem-Solving and Due Process Leave. (7-1-98)**

a. Connected with Official State Duty. When an employee is subpoenaed or required to appear as a witness in any judicial or administrative proceeding in any capacity connected with official state duty, he ~~or she shall~~ is not ~~be~~ considered absent from duty. The employee ~~shall~~ is not ~~be~~ entitled to receive compensation from the court. Expenses (mileage, lodging, meals, and miscellaneous expenses) incurred by the employee ~~shall~~ must be reimbursed by his ~~or her~~ respective ~~department~~ agency in accordance with ~~department~~ agency travel regulations. (3-16-04)(8-20-08)T

b. Private Proceedings. When an employee is required to appear as a witness or a party in any proceeding not connected with official state duty, the employee ~~shall~~ must be permitted to attend. The employee may use accrued leave or leave without pay. (3-30-01)(8-20-08)T

c. Jury Service. When an employee is summoned by proper judicial authority to serve on a jury, he ~~or she shall~~ will be granted a leave of absence with pay for the time which otherwise the employee would have worked. The employee ~~shall be~~ is entitled to keep fees and mileage reimbursement paid by the court in addition to salary. Expenses in connection with this duty are not subject to reimbursement by the state. (7-1-87)(8-20-08)T

d. Problem-solving and due process procedures. Any employee who has been requested to serve as a mediator as provided by ~~an~~ departmental ~~agency~~ agency problem-solving or due process procedure or to appear as a witness or representative during such a proceeding ~~shall~~ will be granted leave with pay, without charge to vacation leave or compensatory time off for overtime, to perform those duties. (7-1-98)(8-20-08)T

e. Notification. An employee summoned for court and jury service or requested to serve as a grievance panelist, witness, or representative ~~shall~~ must notify his ~~or her~~ supervisor as soon as possible to obtain authorization for leave of absence. (7-1-87)(8-20-08)T

~~09. Election Leave. When requested by an employee, an appointing authority shall grant leave with pay, without charge to vacation leave or compensatory time off for overtime, for voting in primary, general, municipal, school, or special elections in those instances where the employee's work would interfere with his or her being able to vote. (4-5-85)~~

~~107. Religious Leave. Appointing authorities shall will make reasonable accommodations to an employee's need for leave for religious observances. Such leave shall be is charged to the employee's accrued vacation leave or compensatory time off for overtime. (4-5-85)(8-20-08)T~~

~~108. Leave During Facility Closure or Inaccessibility. (7-1-93)~~

~~a. Authorization. When a state facility is closed or declared inaccessible because of severe weather, civil disturbances, loss of utilities or other disruptions, affected employees shall be are authorized administrative leave with pay (Ref. Rule 250.06) to cover their scheduled hours of work during the closure or inaccessibility. (4-5-85)(8-20-08)T~~

~~b. Compensation for extra hours worked. An employee who works at a state facility during declared closure or inaccessibility shall be, in addition to regular salary, granted time off equal to the number of hours worked. If overtime is involved, it shall be compensated as provided by Section 67-5329, Idaho Code. (4-5-85)~~

~~eb. Early release. When the appointing authority or designated representative authorizes early release of employees pursuant to Rule 250.11.a., the resulting time off shall will be charged to administrative leave with pay. (Ref. Rule 250.06) (3-16-04)(8-20-08)T~~

~~109. Red Cross Disaster Services Leave. Employees who have been certified by the American Red~~

Cross as disaster service volunteers ~~shall~~ will be granted up to one hundred twenty (120) hours of paid leave in any twelve (12) month period to participate in relief services pursuant to Section 67-5338, Idaho Code.

~~(3-30-01)~~(8-20-08)T

**130. Employee Assistance Program Leave.** Up to two (2) hours per visit ~~shall~~ will be granted for utilization of the Employee Assistance Program (EAP) during normal working hours. This leave is limited to the number of free program visits provided in the state's Behavioral Health Program. ~~EAP leave shall be coded as MDA.~~  
(Ref. Rule 240.04). ~~(3-30-01)~~(8-20-08)T

**11. Bone Marrow and Organ Donor Leave With Pay.** (8-20-08)T

**a.** Approval. Upon request, a full-time employee will be granted five (5) work days' leave with pay to serve as a bone marrow donor or thirty (30) work days' leave with pay to serve as an organ donor. The employee must provide the appointing authority with written verification that the employee is the person serving as the donor. Paid leave, as provided in these rules, is limited to one-time bone marrow and one-time organ donor leave per employee. (Ref. Section 67-5343, Idaho Code) (8-20-08)T

**b.** Use. An employee who is granted such leave of absence will receive compensation without interruption during the leave period. For purposes of determining credited state service, pay advancement, performance awards, or any benefit affected by a leave of absence, the service of the employee is considered uninterrupted by the paid leave of absence. (Ref. Section 67-5343, Idaho Code) (8-20-08)T

251. -- 259. (RESERVED).

**260. COMPENSABLE HOURS.**

**01. Biweekly Employees.** With the exception of holiday leave, no leave may be used if it results in pay in excess of the employee's regularly scheduled work week. (8-20-08)T

**02. Ineligible Employees.** Employees who are "executive" as defined by Section 67-5302(12), Idaho Code, are ineligible to earn or receive payment for hours worked or accrued beyond their regularly scheduled work week. (8-20-08)T

**261. HOURS WORKED.**

**01. Hours in Performance of Job.** Those hours actually spent in the performance of the employee's job, excluding holidays, vacation, sick leave other approved leaves of absence, and excluding on-call time. (8-20-08)T

**02. Travel Time.** Travel time is compensated pursuant to policy set forth by the Board of Examiners. (8-20-08)T

**03. Hours Outside of Regular Working Hours.** Attendance at lectures, meetings, training programs, and similar activities outside of the employee's regular working hours when attendance has been directed by the appointing authority or designee. (8-20-08)T

**2602. OVERTIME.**

**01. Employing Agencies.** The state is considered as one (1) employer for determining the number of hours an employee works. If an employee works for more than one (1) ~~department~~ agency, the ~~department(s)~~ agency employing the employee when the overtime occurs ~~shall be~~ is liable for compensatory time off or cash compensation as provided by law. ~~(7-1-87)~~(8-20-08)T

**02. Compensation for Overtime.** Overtime accrual and compensation for classified employees is covered by Sections 67-53298 and ~~67-5330, Idaho Code, and Section~~ 59-1607, Idaho Code, for nonclassified employees. Overtime is defined in Section 67-5302(~~1920~~), Idaho Code. Overtime does not include any time, such as traded time, or occasional or sporadic work, which are excluded from the overtime calculation by federal law.

~~(7-1-87)~~(8-20-08)T

**03. Modification of Workweek or Schedule.** No ~~department shall~~ agency will alter a previously established work week for the purpose of avoiding overtime compensation. An ~~department~~ agency may modify the employee's regular schedule of work to avoid or minimize overtime. ~~(7-1-87)~~(8-20-08)T

~~2643.~~ -- 269. (RESERVED).

**(BREAK IN CONTINUITY OF SECTIONS)**

**272. POLICY MAKING AUTHORITY.**

To address the need for all classified employees to be treated ~~equally~~ fairly, and in situations where the State may be considered as one (1) employer, the Division of Human Resources Administrator may issue guidance to provide consistent interpretation of federal law, state law, executive order or rule. ~~(3-16-04)~~(8-20-08)T

**~~273. MINIMUM HUMAN RESOURCE POLICIES.~~**

~~In order to ensure consistent minimum standards for employee rights and responsibilities under federal law, Idaho Code, and executive orders, each agency is required to have policies on the following, and take steps needed to inform employees of their rights and responsibilities under those same policies. If an appointing authority does not provide employees with the agency specific policy, a model policy issued by Division of Human Resources will apply.~~ ~~(3-16-04)~~

- ~~01. Problem Solving. (Ref. Rule 200) (3-16-04)~~
- ~~02. Due Process. (Ref. Rule 200.01.a.) (3-16-04)~~
- ~~03. Compensation, Including Overtime and Compensatory Time. (Ref. Rule 073.06) (3-16-04)~~
- ~~04. Reasonable Accommodations/ADA. (Ref. Rule 021) (3-16-04)~~
- ~~05. Sexual Harassment and Other Illegal Discrimination. (Ref. Rule 021) (3-16-04)~~
- ~~06. Conflict of Interest—Nepotism. (Ref. Rule 024 and 025) (3-16-04)~~
- ~~07. Drugfree Workplace. (Ref. Rule 190.01.f.) (3-16-04)~~

~~2743.~~ -- 999. (RESERVED).