

Dear Senators ANDREASON, Coiner & Malepeai, and
Representatives SCHAEFER, Marriott & Ringo:

The Legislative Services Office, Research and Legislation, has received the enclosed
rules of the Dept. of Labor:

IDAPA 09.01.30 - Unemployment Insurance Benefits Administration Rules

(Docket #09-0130-0902).

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 9-8-09. 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 10-6-09.

_____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

TO: Germane Subcommittees for Administrative Rules Review of the Senate and House of Representatives Commerce and Human Resources Committees

FROM: Research and Legislation Staff, Nugent

DATE: August 18, 2009

SUBJECT: Temporary and Proposed Rule of the Department of Labor Relating to Unemployment Insurance Benefits - Docket #09-0130-0902

The Department of Labor is proposing to promulgate a temporary and proposed rule to implement the provisions of House Bill No. 248 of 2009 which amended the Employment Security Law to define "base period" and "alternative base period" for those claimants who have insufficient wages in the base period to establish eligibility for unemployment benefits, to provide that certain claimants shall not be denied regular unemployment benefits solely because they are seeking only part-time work, and to provide for training extension benefits.

The proposed rule would provide that under certain circumstances a claimant may seek only part-time work to reflect the statutory language in HB248. The rule provides that a claimant who establishes that a majority of the weeks worked in their base period for less than full-time work may be eligible for unemployment insurance benefits.

It appears the temporary and proposed rule is promulgated within the scope of the statutory authority granted to the Department of Labor.

cc: Dept. of Labor
Roger Holmes

IDAPA 09 - DEPARTMENT OF LABOR

09.01.30 - UNEMPLOYMENT INSURANCE BENEFITS ADMINISTRATION RULES

DOCKET NO. 09-0130-0902

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is January 1, 2010.

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 72-1333, 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 September 16, 2009.

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:

IDAPA 09.01.30, Subsection 175.12 is being changed to provide that under certain circumstances a claimant may seek only part-time work to reflect the statutory language found in the newly enacted subsection (c) of I.C. 72-1366(4). This subsection (c) provides that a claimant who establishes that a majority of the weeks worked in their base period were for less than full-time work may be eligible for unemployment insurance benefits.

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

Compliance with deadlines in amendments to governing law.

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:

There is no impact on the state general fund resulting from this rulemaking. The infusion of Federal Reed Act money into the state unemployment insurance trust fund will minimize the amount of money the state will have to borrow when the fund is depleted. This will also impact employers by lessening the amount of employment taxes imposed for years 2010 and 2011. It is estimated that this law change will have a cost to the unemployment insurance trust fund of \$500,000 per year.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because IDAPA 09.01.30.175.12 is being changed to accurately reflect statutory language and conform with the new subsection (c) of I.C.72-1366(4) passed during 2009 Legislative Session.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Roger Holmes 332-3570 ext. 3233.

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 September 23, 2009.

DATED this 14th of July, 2009.

Roger Holmes
UI Benefits Bureau Chief
Department of Labor
317 W. Main St.
Boise, ID 83735
Phone 332-3570 ext. 3233 Fax 334-6301

THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT FOR DOCKET NO. 09-0130-0902

175. AVAILABLE FOR WORK.

The phrase “available for work” is defined as a state of mind which involves a readiness and willingness to work, and a desire to find a job, including the possibility of marketing one’s services in the claimant’s area of availability. There must remain a reasonable possibility of a claimant finding and obtaining, or being referred and hired for, suitable work. Ref. Sec. 72-1366(4), Idaho Code. (3-19-99)

01. Alternate Permanent Work. A claimant laid off from regular employment for a short period and who expects to be called back at any moment does not need to be available for alternate permanent work to be eligible for benefits. (3-19-99)

02. Availability Requirements. The type of work for which the claimant is available must exist in the claimant’s area to the extent that a normal unemployed person would generally find work within a reasonable period of time. (3-19-99)

03. Child Care. Child care must be arranged so as not to restrict a claimant’s availability for work or for seeking work. (3-19-99)

04. Compelling Personal Circumstances. A claimant must be available for the whole of the workweek for which he claims benefits except if he is unavailable due to compelling personal circumstances, his unavailability does not exceed a minor portion of his workweek, and during which time he does not refuse or miss suitable work that would have provided wages greater than one-half (1/2) of his weekly benefit amount. For the purposes of this rule, compelling personal circumstances are defined as: (4-11-06)

- a.** A situation in which the claimant required the assistance of emergency response personnel; (4-11-06)
- b.** The serious illness or death or funeral of an immediate family member; or (4-11-06)
- c.** The wedding of the claimant or an immediate family member. (4-11-06)
- d.** For the purposes of this rule, “immediate family member” is defined as a claimant's spouse, child, foster child, parent, brother, sister, grandparent, grandchild, or the same relation by marriage. (4-11-06)

05. Conscientious Objection. No person shall be held to be unavailable for work solely because of religious convictions not permitting work on a certain day. (3-19-99)

06. Contract Obligation. A person who is bound by a contract which prevents him from accepting other employment shall not be eligible for benefits. (3-19-99)

07. Distance to Work. A claimant seeking work must be willing to travel the distance normally traveled by other workers in his area and occupation. (3-19-99)

- 08. Domestic Circumstances.** A claimant is not eligible for benefits if domestic circumstances take precedence over the claimant's availability for work or for seeking work. (3-19-99)
- 09. Equipment.** Claimants will be required to provide necessary tools or equipment in certain occupations. The lack of these tools or equipment will directly affect a claimant's availability for work, unless he will accept other work. (3-19-99)
- 10. Evidence.** A claimant is responsible for providing proof of his availability for work and for seeking work if his availability is questioned or proof is required by these rules. (3-19-99)
- 11. Experience or Training.** A claimant is expected to be available for work consistent with his past experience or training, provided there is no change in his ability to perform that work. (3-19-99)
- 12. Full-Time/Part-Time Work.** ~~A To be eligible for benefits, a claimant must be available for a full workweek and a full, normal workday to be eligible for benefits. A claimant restricting his availability to only part-time work shall be ineligible for benefits. This rule does not apply to claimants who establish~~ unless the claimant establishes that a majority of the weeks worked in his base period were for less than full-time work or the claimant establishes eligibility under the Americans with Disabilities Act. *Ref. Sec. 72-1366(6), Idaho Code.* An individual who restricts his availability to part-time work pursuant to section 72-1366(4)(c), Idaho Code, will be considered fully employed and ineligible to receive benefits if the individual works hours comparable to his part-time work experience in his base period. ~~(3-19-99)~~(1-1-10)T
- 13. Incarceration/Work Release.** A claimant who is incarcerated for any part of the claimant's normal workweek is not eligible for benefits for that week, unless the claimant can establish he has work release privileges which would provide him a reasonable opportunity to meet his work search requirements and obtain full-time employment. (3-19-99)
- 14. Jury Duty/Subpoenas.** A claimant serving on jury duty or subpoenaed is excused from the availability and work-seeking requirements of the law for that time period. A claimant is not ineligible if he must refuse work because of the jury duty or subpoena. (3-19-99)
- 15. Licensing or Government Restrictions.** A claimant prohibited by law from engaging in certain work must be available for other employment to be eligible for benefits. (3-19-99)
- 16. Moving to Remote Area.** A claimant who moves to a remote locality where there is very little possibility of obtaining work will be ineligible for benefits. (3-19-99)
- 17. Prospects for Work.** A claimant who is unemployed for a long period of time is expected to lower his expectations for employment and become available for work which may not have been previously considered suitable. (3-19-99)
- 18. Public Official.** A public official who receives pay and performs "full-time" service is not unemployed or eligible for benefits. Part-time officials, even though receiving pay, may be considered available for work the same as any other individual employed on a part-time basis. *Ref. Sec. 72-1312(1).* (3-19-99)
- 19. Public Service.** Performing public service, including voluntary non-remunerated service, does not disqualify an individual for benefits as long as he is meeting the availability and work-seeking requirements. (3-19-99)
- 20. Questionable Availability.** A claimant must be notified of his questionable availability status and given an opportunity to provide proof of his availability before a determination is made on the issue. (3-19-99)
- 21. Restricting Work to Within the Home.** A claimant who restricts his availability to only work done within the home which severely limits the work available to him is ineligible for benefits. (3-19-99)
- 22. School Attendance or a Training Course.** A person who is attending school or a training course

may be eligible for benefits if the attendance does not conflict in any way with that person's availability for work or for seeking work and if he will discontinue attendance upon receipt of an offer of employment if there is a conflict between employment and the schooling or training. (3-19-99)

23. Temporary Absence from Local Labor Market to Seek Work. All claimants, regardless of their attachment to an industry or employer, must meet the same standard of remaining within their local labor market area during the workweek in order to be considered available for work, unless the primary purpose of a temporary absence is to seek work in another labor market. (3-19-99)

24. Time. (3-19-99)

a. Time Restrictions. A claimant shall not impose restrictions on his time, including either hours of the day or days of the week, which will limit his availability to seek or accept suitable work. (3-19-99)

b. Shift Restrictions. A claimant who restricts his availability to a single shift may not be fully available for work if the restriction significantly reduces his chances of becoming employed. (3-19-99)

25. Transportation Difficulties. Lack of transportation is not a bona fide reason for a claimant to fail to be available for or to seek work. Transportation is the responsibility of the claimant. (3-19-99)

26. Unreasonable Restrictions on Working Conditions. A claimant who places unreasonable restrictions on working conditions so as to seriously hinder his availability and search for work is ineligible for benefits. (3-19-99)

27. Vacation. A person on a vacation approved by his employer during time when work is available is not considered available for work nor eligible for benefits. (3-19-99)

28. Wages. A claimant shall not be ineligible for benefits if the wages or other conditions of available work are substantially less favorable to the claimant than those prevailing for similar work in the local area. Ref. Sec. 72-1366(7)(b), Idaho Code. (3-19-99)

a. Demanding Higher Wages. A claimant shall be ineligible for benefits if he unduly restricts his availability for work by insisting on a wage rate that is higher than the prevailing wage for similar work in that area. (3-19-99)

b. Prior Earnings. The claimant's prior earnings and past experience shall be considered in determining whether he is available for suitable work. (3-19-99)

29. Waiver of One-Year Training Limitation. For purposes of approving a waiver of the one (1) year limitation on school or training courses, specified by Idaho Code Section 72-1366(8)(c)(ii), for claimants who lack skills to compete in the labor market, the following criteria must be met: (3-19-99)

a. Financial Plan. The claimant must demonstrate a workable financial plan for completing the school or training course after his benefits have been exhausted. (3-19-99)

b. Demand for Occupation. The claimant must establish there is a demand for the occupation in which the claimant will be trained. A "demand occupation" is one in which work opportunities are available and there is not a surplus of qualified applicants. (3-19-99)

c. Duration of Training. At the time that the claimant applies for the waiver, the duration of the school or training course is no longer than two (2) years to completion. (3-19-99)

d. Denial. No claimant shall be denied a waiver of the one (1) year limitation on school or training because the claimant is already enrolled or participating in the school or training at the time he requests the waiver. (3-19-99)